APPENDIX

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-767

UNITED STATES OF AMERICA,
Appellant,

—v.—

THE CONNECTICUT NATIONAL BANK, THE FIRST NEW HAVEN NATIONAL BANK, AND JAMES E. SMITH, COMPTROLLER OF THE CURRENCY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

JURISDICTIONAL STATEMENT FILED NOVEMBER 12, 1973
PROBABLE JURISDICTION NOTED JANUARY 7, 1974

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[868] AFTERNOON SESSION

2:20 P.M.

THE COURT: Are the parties ready to proceed?

MR. REYCRAFT: Yes, your Honor.

Professor Charles Stokes.

CHARLES J. STOKES, called as a witness, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Will you be seated, please.

What is your name, sir?

THE WITNESS: My name is Charles J. Stokes.

THE CLERK: Where do you live?

THE WITNESS: I live on Pepper Crossing, Stepney, Connecticut.

DIRECT EXAMINATION

BY MR. REYCRAFT:

Q Dr. Stokes, what is your present occupation?

A I am currently on leave from the University of Bridgeport. I'm serving as assistant director—resources and economic development, the U. S. General Accounting Office.

Q That is a branch of the United States Government?

A Branch of the United States Government.

Q When did you take your leave of absence from the [869] University of Bridgeport?

A As of the 3rd of July of this year.

Q What were your duties with the University of Bridgeport?

A I was chairman of the department of economics and had been chairman since 1960. I was a Charles Anderson Dana professor of economics at the University, and so remain on leave.

Q What has been your prior professional experience?

A I've had a variety of experiences. Let me first just define my teaching experience. I began teaching in 1946, State of Massachusetts, Atlantic Union College, and rose to the dean of that college in the middle '50's. I came to

the University of Bridgeport in 1960. At various times I've served Brookings Institution, Ford Foundation, similar agencies, as well as a series of Fulbright assignments in Latin America.

Q Your Fulbright assignments were in what field?

A They were in economic and industrial development.

Q Had you had any prior employment by the United States Government?

A I had been employed actually in two ways apart from my Army service.

During the Korean period I served as the regional [870] economist—assistant regional economist and director of economic research for the Office of Price Stabilization, region 1, in Boston. That was a two-year period of duty.

And then, of course, a Fulbright professor is, in fact, an employee of the United States Government, and I was a consultant during that—the State Department.

Q Dr. Stokes, what is your educational background?

A I'm a graduate of Boston University in the class of 1943. I received my Ph. D. at Boston University in 1950. I did further work at MIT and at Harvard, and more recently have done work at Brown University.

Q In what areas of economics have you specialized?

A I've specialized in three areas: the area of managerial economics, which deals with the application of economics specifically to business problems; and I've specialized in the economics of developing countries; and I have specialized in finance.

Q Have you taught courses in finance?

A I have taught courses in money, banking and finance.

Q Have you had—

A I guess for 27 years.

Q Pardon me, sir?

A For 27 years.

Q Have you had any direct experience as an advisor [871] or consultant to banks?

A I have been a consultant and advisor to a variety of banks. Would you want me to list some of the banks?

Q Yes, sir.

A I've been a consultant and advisor, for example, in

this area, indeed, one could say, to literally every bank in this community, savings banks, savings and loan and commercial banks. I have also served as an advisor to the First National Bank of Boston and in various ways to banks elsewhere in New England.

Q Have you published any works of your own?

A I have. I have a textbook in managerial economics, I suppose a case book. In that case book and textbook there are detailed analyses of antitrust matters, and there are other books of the sort, and articles that appeared. Would you want those?

Q Have you authored any publications in the banking structure of this particular area?

A I've written actually more nearly two kinds of such things. I should add that I am a columnist, and have been for some years, for a number of newspapers, the Connecticut Business Journal, Westchester Business Journal; in that finance column which appears weekly I frequently comment on banking matters, and beginning in 1953 I began [872] writing a syndicated column in that period in such papers as the Worcester Telegram, now appears in the New Haven Register, the Bridgeport Post and other papers, in which I've commented on, analyzed, banking matters. I've also written in this book, for instance, managerial economics book, detailed analyses of banking situations.

Q Has your professional background included any study of what we call regional economics?

A Yes. Yes, I've made it actually a matter of considerable concern to know the economic development of Connecticut and specifically this region, and, as such, have been an advisor to the Greater Bridgeport Regional Planning Agency, to the State Development Commission, as well as to the Bridgeport area Chamber of Commerce.

Q Dr. Stokes, in the course of the testimony in this case there has been some discussion of what the appropriate market might be in which to analyze—

MR. BENTKOVER: Your Honor, if Dr. Stokes is being offered as an expert witness, we would like the opportunity to examine him on that.

THE COURT: You may.

EXAMINATION ON THE VOIR DIRE

BY MR. BENTKOVER:

Q Dr. Stokes, I believe you said your three areas of [873] specialization were managerial economics, the economics of developing countries and finance; is that correct?

A Correct.

Q Is there another area of economics known as industrial organization?

A Yes, there is.

Q I understand from defense counsel that you were going to testify in the general areas of concentration—

A Yes.

Q —and concentration ratios; is that correct?

A Yes.

Q Have you published any books in that subject?

A I would say chapters 7 and 8 of this book are in fact on the question of industrial organization.

Q In those chapters have you made any original studies of particular industries correlating concentration with performance or profitability?

A In this particular chapter—these particular chapters, I haven't.

Q Have you done them in any chapters you have written; that is, actual independent research in the field?

A Yes, in two ways, actually: In directing theses dealing with the development of banking markets I've conducted that research; and, of course, as a consultant [874] I've developed materials dealing with concentration, industrial development, industrial organization.

Q Have you published any articles in journals directed to economists and professionals in that field?

A In this specific matter?

Q In industrial organization concentration.

A Other than in the textbook, no.

Q Have you done original research in the field which has been presented to other profesional economists?

A In this specific field?

Q Yes.

A I have not.

Q Have you presented papers to economists or professionals in this specific field?

A In the field of industrial organization?

Q Yes, and with particular emphasis on concentration, concentration ratios.

A I would say the answer to that was yes, in—but let me be specific about what I mean when I say yes:

In our economic meetings—that is to say our meetings of our Connecticut Valley Association—and in the meetings of our Institute of Management Sciences I have presented comments and short papers on subjects of this sort. I don't have any with me, however. But I have not published [875] any in the standard journals.

Q I mean the sort of journals that fellow economists read, rather than directed at laymen.

A Yes. I'm dealing—when I speak of papers presented, I'm speaking of papers presented to economists. I've published no papers in the review of economics and statistics in the Journal of Antitrust Economics, no.

Q Have you studied particularly industries or markets and made any conclusions on the effect of concentration, concentration ratios?

A I have.

Q I mean you directly, rather than reading what somebody else has done.

A Yes. For example, in this chapter I discuss at some length, although not by name, research done on the Bridgeport banking market, and refer to it.

Q Who conducted the research?

A I did.

THE COURT: What is the definition in economics with respect to the terms "concentration" and "concentration ratios"?

THE WITNESS: Well, the term "concentration" requires one, first of all, to define a market, and once one has defined a market, then concentra- [876] tion is measured by some indicator which tells you the percentage of that market a given firm or group of firms have of it. Of course, one can also point out that the concentration could be measured in terms of deposits, in terms of sales, so any economic indicator of economic activity in the marketplace

can be used. The total amount of that is the total market, and the proportion held of that activity by any given participant is then the concentration.

Now, a concentration ratio that would follow would be the percentage of that activity, economic activity, however defined, in a given market held by a particular participant in a given marketplace.

BY MR. BENTKOVER:

Q Have you been employed by any bank regulatory agency?

A I have not been employed by any bank regulatory agency.

Q Have you been employed by any governmental agency with duties in the areas of antitrust, mergers and competition?

A I have not been.

I should qualify that to point out that, of course, [877] the Comptroller General does have some influence, but I would want it put on the record that I do not speak for the Comptroller General at this stage and all testimony I give is my own.

Q You are aware that there are a group of economists who do specialist in the field of industrial organization?

A Yes, I've hired some.

Q Why did you hire them?

A Because I felt that our department at the University of Bridgeport needed such people.

Q That is not your area, then, of expertise?

A Our—as department chairman I hired people in every single area, including my own, in order to make sure we had strength.

Q What is your area?

A Well, at that stage—you mean what was my specific area? Well, actually I was thinking in terms—let me be more precise—I was thinking in terms of filling out a department and not myself teaching in any given area; but I would regard my areas as those which I have described. These are areas in which I've taught courses regularly over this—since 1946.

Q Does the University of Bridgeport offer courses in industrial organization?

[878] A It does, indeed.

Q In addition to courses in managerial economics?

A Yes.

Q Have you taught courses—

A I have.

Q —in industrial organization?

A Our courses are such course as Economics 306, which is government and business. I have taught that course with some frequency and would expect to teach it when I return.

Q Is that at a graduate level?

A No. The graduate course, 506, has, in fact, just begun to be offered. I did, however, plan the course.

MR. BENTKOVER: No more questions.

THE COURT: You may proceed, Mr. Reycraft.

DIRECT EXAMINATION (CONT'D)

BY MR. REYCRAFT:

Q Dr. Stokes, were you asked by Government counsel in this case to testify as an expert on behalf of the Government?

A I was, yes.

Q Dr. Stokes, there has been some discussion in this case and some testimony about the appropriate geographic market within which to analyze the proposed consolidation. [879] Can you tell me as an economist what indicators are available to measure a market for a bank and a bank merger?

A This is a complex matter.

Let me point out that in order to define a market one must first of all define the product or service with reference to which a market exists; thus, in the case of banks, one must define the service or the product to be offered. There are complexities in this. It is much easier to define an automobile than it is to define a bank service.

Now, once one's defined a service, one must—or product—one must then point out its careful distinction from other products, say is this in fact a product different from

some other product so that the markets are in fact different markets.

Having established that we do have a separate product distinct from other products, we then go on to, in the case of what is in effect retail or wholesale marketing, to define the geographical region in which this product is being sold; and thus we have obtained a product separate from other products and a market in which that product is sold and in which the participants in this market feel that, in fact, they are in competition with each other or have someone act [880] as if they are in competition with each other.

Q Are there geographic market areas which are used by various government agencies for different purposes?

A Yes, there is quite a wide range of such markets. Obviously, the one perhaps most frequently known is one which is used in banking, the central metropolitan statistical area, which replaced the standard metropolitan area recently, three censuses ago. In addition to these there are such areas as an urbanized area, in the Bridgeport area, for example—by the way, the SMSA is defined in terms which are for New England unique. In New England one deals with towns; one moves from one town to the next until one thousand persons per square mile—limited region. The urbanized area, however, deals in terms of census tracts, and when one moves from census tract to census tract, number one has run beyond that rule or reached the borders of some other market area previously defined. The census apparently prefers urbanized area, and it publishes data in both forms. Obviously, there is also, for example, demand to make New England comparable to the state economic area. When I say "comparable," you are aware that outside New England the SMSA is a countywide area; it is the central city-county count where a city of fifty thousand or two or more cities of fifty thousand, which are central, as I say, are located, [881] plus all adjacent counties meeting the rules for contiguity. The SEA is a county concept used in—by the Department of Commerce, for example, in reporting on income data to make it comparable with the area used outside New England.

In addition to these there are such areas as the labor market area defined by the Department of Labor, but, in

fact, defined by the local State Department of Labor here in Connecticut, only the Bridgeport LMA overlaps and is completely contiguous or colinear to the property, has exactly the same limits as the SMSA. There is also a housing market area defined by the Federal Housing Administration. It does in fact have the same limits in Bridgeport as the SMSA. There is a retail marketing area. This is not the same, however. It includes the Town of Westport. These are all federal government definitions of market areas and serve a variety of purposes. One could also point out that, in addition to these, such agencies as Sales Management magazine, Rand McNally, Standard Rate & Data Service—these are widely accepted market defining agencies, defined as to what different areas for each community. And I could go on pointing out that there is indeed a variety. Here in New England the decision of the census to use the town has created a good deal of confusion. There's rather less confusion outside of New England, but [882] here in New England, given the proximity of markets and the obvious overlap between markets, it has been a problem.

May I point out that there is some evidence that some of the choices with respect to SMSA's though not the ones we're talking about, were made for political reasons and do have no economic foundation at all.

[883] Q Doctor Stokes, is there a—are there regional economic planning associations which use different kinds of market concepts?

A Here in Connecticut the County has by and large disappeared as a unit for governmental purposes and has been replaced by the planning region. The greater Bridgeport planning region, for example, is six towns, and the Towns of Milford and Shelton, which appear in the SMSA, do not appear in the greater Bridegport region. Milford is, in fact, assigned to the south central planning region.

Now, using the planning region as a basis for putting together units, the regional planning—Regional Planning Association of New York, which is a nongovernmental organization, and the Tri-State Regional Planning Association, which is a governmental agency, a compact relationship between the States of New Jersey, Connecticut and

New York, have defined metropolitan, the metropolitan area they service, and have included south central, greater Bridgeport, Southwestern and the Danbury region in their zoning, as I recall, however, regional plan puts south central somewhat beyond the limit, an outer zone, whereas Tri-State puts—since they are dealing with the west end service of the New Haven Railroad—puts all of the south central area in the compact or metropolitan area as defined for greater New York.

[884] Q Do any of these concepts necessarily, in your opinion, constitute appropriate markets for banks?

A I would say that none of these, per se, constitutes an adequate market for banks.

When one is dealing with what is an adequate market, one has at least two approaches one can take. One of them, typical marketing approach, is to ask the participants in the market what they think their market is, and the other, of course, is to ask the consumers where they in fact shop or do their business, so we can use the—their information to derive the market limits.

Neither one of these would, I think, yield essentially the same areas as the SMSA would here in Connecticut.

Q Have you had an opportunity to form an opinion as to what the market is of Connecticut National Bank?

A Yes. One of the intriguing things about Connecticut was the emergence, certainly, by the early '50's of what I would call a de facto banking district. I use the words "banking district" rather than a service area because I'm thinking of the New York example where there were de jure banking districts, and if you examine the behavior of banks where they chose to put their branches, you discovered rather quickly that they were behaving as if there were certain limits to their trading areas, or districts.

[885] For example, this Exhibit D-38, which is not something that I prepared, I understand this has been prepared by—shows the First New Haven. The black areas are areas where there were branches in 1960—pardon me—the shaded areas were areas in 1960, and then the black areas are those where branches were added, and it is clear that the First New Haven has defined its branch—its area rather narrowly.

Now, I would point out that many banks in the New Haven area, in fact, took essentially the same area within which to operate. The Connecticut National—

THE COURT: But what's an area?

THE WITNESS: Well, an area—

THE COURT: From a banker's point of view, he doesn't define areas by town boundaries, he defines it by where he gets his business. For example, a bank president—

THE WITNESS: I'll grant that.

THE COURT: —says, "If I have a branch in Devon and I get business in Milford and I get business in Bridgeport or part of Bridgeport, my service area for my bank is Devon, Milford and part of Bridgeport," so how can you tell by looking at a map, because a bank puts a branch in Devon, that the market is Devon? This is what I'm having difficulty between expert and [886] the businessman.

THE WITNESS: Your Honor, let me try to answer that, I don't think there is any real difference between the expert and the businessman on this point. I was dealing specifically with the—the objective evidence would be available. What did the banks do when they were given—when they chose to branch?

Now, in selecting a branch, of course, they selected that branch with a specific area in mind which was perhaps well beyond the town where they chose to put the branch.

THE COURT: And you considered this?

THE WITNESS: Yes, I would argue, for example, that Connecticut National placing a branch in New Fairfield had more than the New Fairfield in mind.

THE COURT: Then, I shouldn't have interrupted you. Go ahead, Mr. Reycraft.

THE WITNESS: And I was going to make the point, really, that when you examine the behavior of Connecticut Banks, you discovered that there were about five districts that tended not to overlap at all, there was a Fairfield County with certain portions of Litchfield County. Admittedly, there was [887] some trespassing, as some would feel, into New Haven County, that would include, of course, Milford and to some degree Orange.

There was a New Haven district, New Haven is shore. There was a Hartford district, which was Hartford County, not including Bristol and New Bedford—and New Britain, and everything east of the Connecticut River.

There was a Waterbury district, which included northern Waterbury—northern New Haven County and all of Litchfield County. Then there was a midstate district, which included New Britain, Bristol, Meriden and Middletown; and when you examined the behavior of banks, you discover that they tended to limit themselves to just these areas.

As I said, by the 1950's it was clear that this was the pattern of behavior. Sometime late in 1960, in fact, I think it was '69, there was a break in this pattern when the Hartford National Bank acquired a bank in Stamford and thus penetrated or crossed the line that, though, did not exist in law, did in fact exist in practice. And shortly thereafter Connecticut Bank and Trust followed suit and we had entry into the New Haven district and into the Fairfield [888] County district.

It was not until that had taken place, in fact, that a statewide market in fact existed.

So what one sees is a period, a long period, in which banks limited themselves largely to the cities where they were located. Then the emergence of a bank district and finally the emergence within recent years of a statewide market produced by the penetration into the pre-existing markets of Hartford banks.

THE COURT: Are you using the singular? I am picking you up right that there is one statewide market —and you said the Hartford bank?

THE WITNESS: Hartford banks.

THE COURT: Which two are you talking about?

THE WITNESS: I'm talking about the Connecticut Bank and Trust Company, the Hartford National Bank. It was these two banks which did, in fact, enter territory which at least by practice had not been open to them in the past.

BY MR. REYCRAFT:

Q Doctor Stokes, is it your view that markets for particular banks in the State of Connecticut are the same, necessarily the same, or are they different?

A Operating—there are, of course—if I take Fairfield [889] County, there are slight differences in service area among what were, until the merger of Union Trust, the four large Fairfield County banks. In part, that was because Fairfield County Trust could not enter Bridgeport. But except for Bridgeport, there were essential similarities, almost precise similarities in branching developments between the then City Trust, the Connecticut National, the old National Bank and Trust Company of Fairfield County, now called State National and Fairfield County Trust Company, and acquired, therefore, essentially similar size as a matter of fact.

Q Can you compare the banking market of Connecticut National Bank and Trust Company and Connecticut National Bank, are they the same markets or are they different?

A They are different, they are potentially the same, but they are different. The Connecticut Bank and Trust Company, in fact, now serves and announces that it serves the entire State of Connecticut, announced that it is, in fact, the only bank that reaches every major city.

Q Have you formed an opinion as to what the banking market is of the Hartford National Bank?

A The Hartford National Bank does, in fact, cover the entire State.

Q At the present time have you an opinion as to what the banking market is of the Connecticut National Bank?

[890] A The Connecticut National Bank is still limited to the same banking district as it had pretty largely occupied early in the '60's.

Q And what is the banking market, in your opinion, of the First New Haven National Bank?

A The First New Haven National Bank district is New Haven County and shore communities to the east. Lower New Haven County, I should point out, they do not cover the upper or Waterbury area.

THE COURT: Is there any way you could be a little bit more precise for me on that?

Q By towns?

THE WITNESS: The towns themselves?

THE COURT: Yes. Do you have something you could look at that would help you?

THE WITNESS: Yes. In the case of New Haven, right in front of me, these would be the Towns of Milford, Orange, Derby, West Haven, the City of New Haven itself, Hamden, Branford, Wallingford and Guilford. They're not in the North Haven or North Branford, because there are, in fact, headquartered banks there.

Q All right. Doctor Stokes, can you do the same thing for Connecticut National Bank?

[891] A This will require a little bit of memory, but —well, let me—if you give me a moment, I'll—again, at the top with New Milford, which was recently entered, New Milford, Brookfield, Danbury and Newton, Bethel, Ridgefield, New Canaan, Stamford, Darien—

MR. REYCRAFT: A little slower.

A Am I going too fast?

THE COURT: You see, Professor Stokes, Mr. Russell has to get this down.

THE WITNESS: I sound like the man at the railroad station.

THE COURT: Kind of consider that you have some students in front of you trying to copy some of the things you might want down on papers.

A —Norwalk, Westport, Fairfield, and obviously Bridgeport, Stratford, Milford, Shelton, Trumbull, Monroe, Newton, Bethel, Ansonia in the Valley, Orange and Southbury.

Now, in addition, there is a pied-a-terre, if you will, in central—upper New Haven County in Waterbury, Wolcott and Prospect, which is the—in the Waterbury area.

Q Doctor Stokes, can you describe the banking market of Union Trust Company?

A In effect, all one has to do to get the Union Trust Company market is to take the First New Haven market, combine it [892] with the Bridgeport market and just leave out the Bridgeport City.

Q You mean Connecticut National market?

A The Connecticut National market and the First New Haven market, leave out Bridgeport City, and I

think you would—we don't have now a Union Trust branch. We have a Union Trust branch in Trumbull, which is the—but there are no Union Trust branches in the Bridgeport SMSA besides Trumbull at the moment, to my knowledge.

THE COURT: May I ask you this. If you—let me give a hypothetical. If a executive officer of the First New Haven National Bank said to you, "What is your banking market," and you gave him the answer that you just gave for the record, and, in fact, he said to you, "We have five thousand accounts from the Town of East Haven," would you change your opinion? In other words, East Haven is between New Haven and Branford.

THE WITNESS: I'm sorry, did I leave East Haven out? I did, and it should have been included.

THE COURT: Oh. All right. Let me give you another example.

THE WITNESS: I skipped over East Haven as I went through.

THE COURT: That's a bad town to skip over.

[893] MR. REYCRAFT: That's a mistake.

THE WITNESS: A terrible mistake.

(Laughter.)

THE COURT: I think the trouble is too many people have been skipping over East Haven.

THE WITNESS: I can only, in the most abject terms, ask for apologies.

THE COURT: Say this officer says to you, "Professor Stokes, I'd like to tell you something, we have 5,000 accounts that come in from Madison, did you know that?"

"No, I didn't know that at all."

Would you modify your opinion?

THE WITNESS: It would not surprise me at all to learn since the next town over is Guilford—you see, I would look the following way, I would expect of course, given the variety of kinds of customers, I would expect that any—if I looked at the commuting pattern, and if the commuting pattern from Madison took people through Guilford past an office of the First New Haven, I would anticipate the First New Haven would be after that.

Now, that's the retail customer, shall we say.

I would anticipate, too, that adjacent towns [894] which had industries would, in fact, be visited by offices of the First New Haven, so that the First New Haven's branch in Guilford, plus the head office organization on Church Street, would be usually the basis for reaching the markets.

If you told me, however, that there was a large number of customers in any field, I would be, indeed—be surprised.

THE COURT: I think the bank president would be too, but what I'm trying to get clear in my own mind is that I have a feeling—and I am just saying I have a feeling—that when a bank president tells me his market is with a bank, we will say, on Church Street in New Haven, "My market is Church Street, Elm Street, Orange Street and Chapel Street, because all my business, or 99% of my business in my bank comes from that service area," that that perhaps is a little more reliable than an expert who has never looked at the bank's books, who would say, "Well, since you have a bank on Church Street, your banking market has to be the City of New Haven," and he could say to you, "It may have to be in theory, but in practice, it just isn't. My accounts come from four streets, my service area, therefore, is four streets. In [895] theory, we should be as far as Fountain Street in New Haven, but in practice, it isn't."

Now, as a professor talking to a student, if he asked you that question, what would your answer be?

THE WITNESS: I think you have made a point, your Honor, which certainly needs to be made. Let's make it a little differently. One of the way to define a market is to ask the people who, in fact, are served.

THE COURT: Right.

THE WITNESS: And I am going to make that point at some length later. One could—certainly, one would have to—if one were examining Gimbel's accounts over here, to be neutral about it, one would find out where are customers and where does Gimbel's think its impact is, and what is done, in fact, in marketing analysis, is to proceed to put, if you will, pins on maps to see where

all these are in order that we can derive a market when it is finally derived as the result of any number of evidences about what that market is so that we do not rely upon economists but an economist would in this case—we do happen to know where some of these [896] accounts are located, because they have been made a part of the evidence in this trial. But we would have to know that evidence, in fact, to make a judgment regarding a market. So that it is enough to assert that simply because a branch is located there that this limits the market.

It is noticeable, of course, that given the laws in Connecticut—suppose, for example, that North Haven is closed—well, let me take a much more familiar example, there are branches here in Bridgeport called Stratford line branches. Until the purchase of the Stratford Trust Company by the City Trust Company, which opened Stratford to other branching, no Bridgeport bank could enter Stratford except under a very unique provision of Connecticut law which said that a bank could, in fact, open a savings bank, the Connecticut National had a savings bank doing only savings business on the Main Street just south of—just north of the intersection of Barnum and Main Street.

So that City Trust, State National had Stratford line branches to get as close to Stratford as possible, their business was Stratford, but they could not be in Stratford, and one suspects [897] that the New Fairfield branch was, in fact, there to get it close to Litchfield County as was possible, because it was not possible to enter Litchfield, New Milford, so that I think one could, by examining branches, discover something of what the bank felt its market either was or could be. But this would hardly be sufficient.

By the same token, a New York bank might well operate in a market far beyond New York City.

THE COURT: I don't want to prolong this, but if you did meet this executive officer and he did tell you the volume of business that they were doing in Madison, I take it, then, you would say, "Well, yes, your banking market does include Madison," but if he came back to you on the same hypothetical and said, "We have not one ac-

count, no one borrower from the Town of East Haven, not one," you might be surprised, but, then, you would say, "Well, then your banking market is not the Town of East Haven. What accounts for it? I don't know. Maybe it's commuting or labor."

THE WITNESS: It would come as a great surprise to learn that a town immediately adjacent and closely related to New Haven did not have—

THE COURT: If, in fact, that were not the case, [898] the banking market would not—

THE WITNESS: Would not include East Haven.

THE COURT: So, then, may I ask you a very simplified question: when you define a banking market, why don't you go over and sit in a bank and look through and see where their accounts are from, as the executive officers, and then ask—if you want to go out and ask some consumers, put it all together, and if X percent of the business is coming from four towns, you would say, "Well, your banking market is four towns, although there are exceptions, I notice a very large account from Enfield." He might say, "Well, that's my brother's factory, and he is doing business here." So you could exclude that as kind of an exceptional case.

I mean, why don't you do it?

THE WITNESS: I would regard that as very good practice. Let's see, if I'm dealing with Gimbel's, that is precisely what I would want to do. The definition must be, one could argue, in the absence of any evidence to the contrary, the objective evidence for a market is where the bank in this case is located. But that's hardly sufficient. One should, as you suggest, and I think quite correctly, find out [899] from the bank where its accounts are. Not only where its loans are, but where are its deposits. And then there might be—exist—potential market of people who could—

THE COURT: I have been very careful not to use the word "potential", because then I can see where a banking executive, officer, might say, "Okay, we are in East Haven, is there a potential in Branford,"and then all sorts of things come in, commuting, types of business, whether a big corporation is going to open a store in Branford, and if so, the type of bank that's asked you to make this inquiry, is that the type that can service such a big town?

I carefully worded my question not to include "potential". But I have interrupted you, Mr. Reycraft, go ahead.

THE WITNESS: I should make one comment, in addition. You must have noticed as you drive into Bridgeport from the east a very large sign from State National.

THE COURT: I saw one from People's Bank out there today.

THE WITNESS: They very obviously are trying their best to reach people driving through the community who may not stop.

[900] BY MR. REYCRAFT:

Q Doctor Stokes, do you have an opinion as to whether there are banks whose offices are not located in the State of Connecticut who consider all or any part of the State of Connecticut to be part of their banking market?

A Yes. I have a number of bits of evidence. Let me back up a bit in order to put this evidence in context. We were talking about market areas, there were two market areas that I should have added. One is called the area of dominant influence, ADI, which is a television market concept, and there is another one called the—well, let's see. The principal market influence, but in any case, somewhat similar, but less tight than ADI, defined, incidentally, by the Standard Rate and Data Service and published in its regular bulletins on markets.

The television market, then, for New York, includes Fairfield County. Fairfield County constitutes between 4.1 and 4.5% of the television households in the market, and it is, therefore, the largest, in fact, the second largest outside the City of New York, outside—pardon—outside the SMSA of New York, the New York SMSA 64% of the market, as I recall, and the next is—I have it here—the Newark market—Newark is the largest outside of New York, 9.7, Paterson at 7.1 and Bridgeport at 4.1% of the area.

Q Bridgeport or Fairfield County?

[901] A I'm sorry, Bridgeport in this case is defined as the Bridgeport-Stamford-Norwalk-Danbury. That's the state economic area or the—one of the designations for Bridgeport.

Now, using this market, and also the newspaper market, for which there is equal evidence—let me put that in the record. Looking at the area, in the morning the Bridgeport-Post Telegram, which has a circulation of 11,521 copies, but the largest circulation in Fairfield County is 44,058 of the New York Daily News, the New York Times has circulation of 29,360. So that the Bridgeport Post, the only morning paper published in this County, is third. 73,418 copies of New York papers are circulated daily in the morning in Fairfield County. On a Sunday it's 118,405 copies of New York papers circulated as against seventy-nine copies for the Bridgeport Post, this would indicate that on normal rules, Fairfield County is in the New York newspaper market, as well as in the New York television market. I have more figures, also, for New Haven and Hartford Counties.

Q What bearing do these two factors have upon the banking market in the State of Connecticut?

A Now, when you examine the way in which banks advertise you will observe that the large New York banks use television and newspapers to reach their markets. In fact, one only has to go over to the New Haven Railroad Station here in Bridgeport [902] and discover a large poster for the First National City. So that throughout this area through major media television, and newspapers, the New York banks reach this area.

Now, we have other evidence showing the amount—the results of this advertising, the number—the amounts of money held out in New York banks by people resident in Connecticut, as well as the number of accounts. So we see both the attempt to reach the market and we see the result of reaching the market.

Q What do all of these factors you have described have to do with the ability of banks in Connecticut to price their banking services?

A I would suppose that a savings bank, for example, could not ignore Joe DiMaggio appearing so regularly on Channel 2 and 4. I would suppose, also, that a Connecticut commercial bank could not ignore Manufacturers Hanover or First National City or Chase where everyone has a friend. All of these banks, in fact, cover the airwaves. Indeed, one finds very little local coverage.

Not—I should point out that in a recent survey made by Opinion, Incorporated of Stamford, Connecticut, in connection with an attempt to determine what people recognized as names—and it was done for the County Federal Savings and Loan Association of Westport—they asked people to [903] check off names that they recognized and they gave them lists of local banks, as well as New York banks, and the recognition factor for the New York banks was, in fact, higher than the recognition factor for some of the local banks.

Q Doctor Stokes, based upon your background and experience in the banking industry, do you have an opinion as to whether banks generally price their services on a systemwide basis, or do they vary them from office to office?

A In looking at the Connecticut banks, the evidence is that they price on a systemwide basis.

Q And what impact does that have upon the ability of banks in Fairfield County to price their services in relation to banks with head offices outside the area who have offices here?

A Well, to the extent that—during that period during which there was a de facto banking district separate from the rest of the State, then any bank operating in this area had only to look at the banks in its district, its market, but when that market was penetrated by Hartford Banks, they could, in fact, no longer ignore the influence of Hartford pricing and, indeed, have had to take it into account. So that in this sense the market not only in the sense of physical presence, but in terms of influences upon pricing policies, the statewide market came into existence when Fairfield County district banks had to respond in all service areas to [904] Hartford influence.

Q Doctor Stokes, Plaintiff's Exhibit No. 68 indicates that as of the date set forth in the exhibit, June 30, 1970, Connecticut Bank and Trust Company had a total of 27 million dollars in deposits in its five New Haven SMSA offices, and which constituted, according to the exhibit, 5.1% of the total SMSA deposits.

In your opinion, is there a reasonable indicator of the market power of Connecticut Bank and Trust Company in that SMSA?

A I don't think that one could regard that as a complete indicator, no.

Q Why not?

A Obviously, at any office in New Haven the Connecticut Bank and Trust Company can make available its lending power far in excess of limits indicated by this disembodied measure.

Q Let me show you Plaintiff's Exhibit No. 68. It shows concentration ratios in the New Haven SMSA, is that right?

A It does.

Q Can you tell me what the utility is of concentration ratios from the standpoint of an economist?

A That's a fascinating subject. Let me point out not all economists agree that there's any validity at all to the concept. But to the extent that it does have utility, a [905] concentration ratio, providing one has defined the market and the product adequately, indicates the relative market power available to a participant.

One of the problems, though, with this particular approach—and it is a problem that, in part, proceeds, your Honor, from your remarks about customers and their definitions of market—is that the Federal Deposit Insurance Corporation in an attempt to come as close to this as possible began in the 1960's to use an approach which said, in effect: let's find where the accounts are domiciled. So that we get what I call—called earlier a disembodied view of banking when we say, for example, Connecticut Bank and Trust Company, we see only that portion of the Connecticut Bank and Trust Company with domiciled accounts in the SMSA. Or for First New Haven we see only that portion, this is not the total bank. One could argue that if one wanted to carry this reasoning further, one ought to go to the potential—the customers themselves and discover what were alternate accounts actually domiciled in a SMSA, this would require you to list, for example, for Bridgeport, my account, which is with the First National Bank of Boston, this would not show up under any FDIC figures. Thus, the total universe would be made up of all of those accounts held by people or businesses in the New Haven or the Bridge-

port SMSA, it would be a figure we think significantly larger than this figure, [906] which is a halfway house between a headquartered approach and a total customer approach, and if one did this, one would, I think, get a better view of concentration ratios if that were the best way to measure bank structure.

Incidentally, I have—I'm not at liberty to argue the matter of bank structures, structures being measured in this way, I think it's been settled by higher courts, so I have to accept that particular concept as a measure of structure.

Q Doctor Stokes, let me ask you whether that exhibit, P-68, indicates, in your opinion, a fair evaluation by percentage of the relative market power of the banks indicated thereon?

A No, it would not. I would think—I think there is defense for the opposite point of view, which is the point of view that the—a bank brings to bear at every office its total lending power, thus, a measure of market power should take into account the actual size of the bank and not this disembodied concept, so that one would see the Connecticut Bank and Trust have available a billion some sixty million dollars in deposits and not just twenty-seven, and that it had capital resources, substantial resources, and could on that basis set loan limits considerably higher than might be indicated by these figures.

So that the market power, if you mean by that the ability [907] to lend, the ability to dominate a market through lending and similar practices, it could not be revealed by these figures.

These figures, however, do show that within the market defined area and using this disembodied concept, what the relative size is.

Now, this would be all the more meaningful to the extent that the SMSA was, in fact, an entirely separate area. If one deals with Denver, Colorado, one is likely to pick up in Denver all that's significant because there are really no close-by dominant SMSA's.

When one deals with New England—this is the issue we made earlier—the SMSA has the difficulty of forcing you to divide up, as you do here, organization, dis-

embodied them, so to speak, so you don't see them in their entirety.

Q Doctor Stokes, based upon your general knowledge of banking in Connecticut, how do the banks listed on P-68, in fact, rank in terms of their total size?

A Well, let me take the first five banks. First New Haven, Second National, Union Trust, Connecticut Bank and Trust, and Hartford—and Hamden National, that's the order in which they are listed here. Obviously—and by the way, one can find Hartford National down toward the end of Connecticut National, depending on which this year—CBT and Hartford National have been pretty much jogging for position, [908] it's pretty hard to say which one head in any one year, but as I recall, Hartford National was first in '70, Connecticut Bank and Trust was second, Union Trust was third, and if I am not mistaken, that year Connecticut National was fourth. First New Haven would have been either sixth or seventh in that year.

So that in—I'm dealing now with their size—total size as corporate organization, that is: whether one looks at deposits or assets. So that one would not get from these figures a sense for the total size of the organization.

Q From the standpoint of the businessman wanting to borrow from one of these banks, do you know what the relative lending limits of the banks on that exhibit are?

A Yes. Very clearly, the Connecticut Bank and Trust Company and the Hartford National Bank would have substantially larger lending limits than First New Haven or Second New Haven, who are listed as one and two; the importance of that would be that for any businessman walking down Church Street to try to get a loan, he would, if he were looking for very large amounts of money—would surely want to go to one of the large Hartford banks.

Q What is the third ranking bank in New Haven in terms of its lending limit?

A In New Haven itself?

Q Yes.

[909] A Union Trust Company.

Q And First New Haven ranks where?

A First New Haven would be in the New Haven area—would be actually since CNB is in here, then First New Haven would be fifth, it would be the two Hartford banks, Union Trust, Connecticut National and then First New Haven.

Q Now, is it true that economists use concentration ratios to draw inferences as to market power?

A They do, indeed.

Q And is it true that a large market share tends to be something from which an economist infers market power?

A Certainly.

Q Does P-68 validly portray the relative market power in the New Haven area, in your opinion?

A I would say it does not. This is the difficulty with this particular consent.

Q Would you further take into account the existence—

A This particular measure, not the concept.

Q Would you further take into account the existence of savings banks in evaluating market power in New Haven?

A Yes, I would. Here I would have to distinguish the kinds of markets we are talking about, but quite certainly, yes.

Q Doctor Stokes, would the same thing be true of P-65, which has similar data for the Bridgeport SMSA?

[910] A Essentially, the case would be true. There is this difference, it has a 1970, June 30th, 1970— actually offices of the 12th—31st of December of 1970, if that's the case, if I am not mistaken, CBT was than already in Bridgeport as of December.

Q But it is now, in any event?

A Yes, it was as of December of last year. So that CBT is listed here, if I take that, then, the order in which these are listed in this exhibit, P-65, are Connecticut National Bank, one; City National, two; State National, three; Lafayette, four; First New Haven, five; Second National, six; Scaples, seven; and CBT, eight.

One would, of course, begin by listing CBT as first.

Q So that, in your opinion, does P-65 accurately portray the relative market power of the institutions listed in the Bridgeport SMSA?

A I think not only would I say so, but I'm afraid my banking friends would certainly have to remark that it is a different market with CBT here.

Q And does it, in your opinion, detract from its validity that savings banks are not included?

A Yes, I would say so.

Q Doctor Stokes, what differences does it make to a small depositor what size a commercial bank is?

[911] A The evidence available is that it makes practically no difference at all what size a bank is, it is more a matter of convenience, I give you such evidence as the rapid growth of the Bank of Stratford.

Q How about a small depositor, what difference does it makes to him how big the bank is?

A It would make no difference.

Q Or a small borrower? Did I say that?

A I would say it makes no difference, since the ability to lend three, five thousand dollars limit, typical small loan at the maximum, would be present in all banks.

[912]

BY MR. REYCRAFT:

Q At what levels does it begin to make a difference to the customer?

A I'd be tempted to structure it—let's look at the asset market and then the liability market.

On the asset side, where we're dealing with loans, there is, of course, a largely retail consumer market where the maximum loan at the most is $5,000, and that constitutes most of banking business. Then there's an intermediate area, professional people, small businessmen, that might run up to fifty, a hundred thousand dollars, perhaps a little bit more. And then the top market, the market which is the market for large loans. And in each of these markets there are in fact somewhat different practices.

Now let's look at the other side. On the liability side most deposits would be of this—if I look at the recent

call reports of the banks in question, substantial portions of these are demand, but also—checking accounts and time and savings accounts, which have small amounts. Then the intermediate range, professional, small businessmen. And then the top accounts. And once again that bottom consumer or retail market is the dominant market. In that market it literally makes no difference whether one goes to a big or a small bank, since all banks [913] are essentially alike. Indeed, one could point out that essentially one can get the same services in that market by walking into a savings bank as he could from walking into a commercial bank.

Q Dr. Stokes, in your opinion would the acquisition by Connecticut National Bank of Woodbridge Bank & Trust Company enable Connecticut National Bank to make an effective entry into the banking business of the City of New Haven?

A No.

Q Why not?

A Well, there are really several reasons.

For one thing, Woodbridge is really somewhat out of the way from New Haven. It does not constitute—it would constitute a good way to dominate Woodbridge and Amityville, but beyond that I cannot see its influence upon—it would permit—let's take—if permitted to enter the consumer market in the area where Woodbridge Bank & Trust Company is located, it could not permit it to enter the professional business, the large or the top of the line business, since that would presumably be in the CBD, the central business district, and in an in-industrial area.

But that answer specifically refers to Woodbridge. I might answer differently if you ask me about a different location.

[914] Q There are banks with head offices in North Branford and Hamden, as well.

Would the acquisition of any of those banks by Connecticut National Bank in your opinion enable Connecticut National Bank to make an effective entry into the banking business of the City of New Haven?

A In the case of North Branford, no. In the case of Hamden, it might begin to make a difference, yes.

The major retail enterprises along Miracle Mile in Hamden constitute the largest single non-CBD shopping center in New England.

Q In your opinion would it be important to have representation in the downtown area of New Haven to be an effective competitor?

A I would say that in view of the fact that all the other banks do in fact have branches in Downtown New Haven one should be there. Any person making a comparison who would walk from bank to bank along Church Street and couldn't find Connecticut National, had to get in his car and drive a distance to find it, might not go to Connecticut National.

Q Dr. Stokes, do you know approximately what percentage of the banking business domiciled in Woodbridge, Connecticut, is held by the Woodbridge Bank & Trust Company?

A I don't, but I would suspect it's around—let's see, Woodbridge is around seven or eight million, as I [915] recall, in size, and my guess would be that potential in Woodbridge woudn't be more than double or perhaps two and a half times that. I would suspect that Woodbridge had something of a dominant position in Woodbridge, but dominant would mean perhaps 20 to 30 percent of deposits and could—when one adds in savings deposits, I would suspect that the share is even smaller then.

Q Your assumption is that a substantial amount of business is done by banks outside of that area?

A I would be sure of that.

Q So is it meaningful to you at all that it is the only bank with a head office in Woodbridge?

A Well, it's interesting data, but I can't see that it says anything.

Q So that would a concentration ratio computed on the basis of a Woodbridge market be meaningful?

A I would say no. The answer to that would be Woodbridge is not, itself, a separable market from the New Haven market. Woodbridge is a suburb—and a small one at that—of New Haven.

MR. REYCRAFT: I have some exhibits.

Q Dr. Stokes, will you refer to D-9, Defendants' Exhibit No. 9.

Will you describe that exhibit?

[916] A Would you repeat the question?

Q Yes.

First of all, let me ask you: Was D-9 prepared under your direction?

A It was prepared under my direction.

Q Would you describe the purpose for which you had that exhibit prepared?

A This exhibit presents the deposit concentration ratio trends for all Connecticut banks. Now, the all-Connecticut-bank concept means we have included all those agencies or corporations called banks; thus, it includes savings banks. And "all" would mean the entire State of Connecticut.

And what we have here, then, using the total deposits of all banks in Connecticut, using that as the entire universe—we add here the share, then, of the two largest Hartford commercial banks and how that share has changed between 1955 and 1971, the two largest savings banks and how that share has changed over the 15-year period between '55 and '71, then the share of the next four largest banks, which is not necessarily the same banks in every year but they are the banks which in the listing would have been the next four, and then the bank share that would have been held by the consolidated bank had it existed—that [917]is to say the consolidation of the First New Haven and the Connecticut National Bank.

What these data show is that the Hartford share went from 19.1 percent in 1955 to 17 percent in '59 to 16.8 percent in '64, and finally rose again to 19.6 percent in 1970.

A steady increase is demonstrated by the change of of the share of the two largest savings banks. These, incidentally, are the People's Savings Bank, which was first in some of these years, but by and large the Society for Savings was first in most of these years, though there were years in which People's was first. 9.3 percent in '55 of all deposits, 10.1 percent in '59, 10.9 in '64 and 12.1 in '70.

The next four largest banks—and typically First New Haven and Connecticut National were to be found among those next four largest banks—the share went from 12.2 to 13.9 to 13.4 to 14.1.

Now, these shares are in fact concentration ratios. Had First Connecticut National Bank existed, it would have gone from a share of 7.3 through 6.8, 6.0, to 5.9.

Now, having done that, I next attempted to explain what were the contributions of these changes to changes in concentration ratios—for example, the [918] concentration ratios of the top four banks; that is, the top four agencies called banks—and this would have been in every case, CBT, Hartford National, Society for Savings and People's. That share rose from 28.4 percent through 27.1, 27.7 to 31.7 by 1970.

The largest eight banks—incidentally, among those large eight there were some other savings banks to be found, in addition to the two I mentioned—went from 40.6 to 45.8.

Then I sought to ask: Of these increase in the amount of concentration, what was the share traceable to the change—the savings banks' increase in concentration ratio? For example, between 1955 and 1959, .8 percent of the increase observed in the concentration ratio—you remember that went from 40.6 to 41.0—was traceable to the savings banks, minus 2.1 percent was traceable to the Hartford banks, and the next four banks contributed 1.7; thus, a net change of four-tenths of one percent. From '59 to '64, again, the savings banks added 0.8 percent, the two largest banks minus .02, and the next four banks minus .05. The savings banks contributed to the observed increase almost totally, to the total increase in concentration. From '64 to '70 the savings banks added one point—two points—I want to make sure this is points and not percentages—to the observed increase in concentration [919] ratios; the next two banks, the two commercial banks, added 2.8 percent; and the next four, where the merger would have been, added only .07 percent.

The data were taken from standard sources.

Q Did you also have D-10 prepared, Dr. Stokes?

A I did.

Q What does that exhibit indicate?

A Now, based upon the data available in D-9, a longer listing, we have the concentration ratios actually extending beyond.

In 1971, the largest two banks in the State, this including all banks, all those agencies having "bank" in their title, thus leaving out savings and loan associations but including all savings banks—the largest two banks, Hartford National and Connecticut Bank & Trust, had 18.6 percent of the total deposits; that was their concentration ratio of that universe defined. The next two banks, Society for Savings in Hartford and the People's Savings Bank in Bridgeport, had 12.6 percent of the total market. The next four largest, to be Union Trust of New Haven, State National of Bridgeport, Connecticut National of Bridgeport and New Haven Savings Bank, of New Haven, had 14.1 percent.

So the five largest, adding it that way, had 35.7 percent. Had the merger taken place, had it taken place in [920] '71 then the five largest would have been Hartford National Connecticut Bank & Trust, Society for Savings, People's Savings and then First Connecticut National. Now, whereas the concentration ratio for the top five was 35.7 percent, it would have been 36.6 percent, or slightly larger, if the merger had taken place, using that universe.

Q Did you also have D-11 prepared, Dr. Stokes?

A I did.

Q What was the purpose of that exhibit?

A D-11 must be seen against the background of D—actually, 12 and 13.

What we did in the case of D-11 was to produce some trend lines and then extend those trend lines over the period to 1982.

We looked—there were two things we were measuring: first, the share—and, by the way, the universe for Defendants' Exhibit 11, D-11, is all commercial banks, and so it is the deposits in all commercial banks; the savings banks are not included in D-11.

In looking at D-11, then, and keeping in mind, actually, chart D-13, we see that the share of total deposits in the State held by these two large Hartford banks increased

steadily throughout the 1960's and into the—into 1970; and we simply extended that trend and saw where [921] it would go. So that line one is then drawn up on the assumption that the trend in evidence by 1971 would in fact extend throughout the next decade or so. Similarly for the next six banks, so that we're including both the top two and next six, to make it a total of eight. We examined their behavior and we drew a correlation and then extended that over the next twelve years or so—or, actually, ten years in this case—and what we did was then to discover that, whereas the Hartford share had been increasing, the share of the next six—pardon me—to be more precise, the share of the top two had been increasing—the share of the next six had been steady, with some fluctuation; and so we extended that trend, and thus, as one looks at this diagram, one observes that over the years the Hartford share continues to increase and the share of the next six continues to remain steady.

It was that factor which I observed as a potential early in the 1960's which led me to become concerned about this and to begin my research, because I was—my real interest in this matter is to preserve the viability of downstate banking, and, as I saw it, there was every likelihood at the rate of trend then noticeable that the Hartford banks would not only increase their share but would sooner or later seek to penetrate elsewhere in the State.

[922] THE COURT: I am just curious. On your figure for 1972—

THE WITNESS: Yes?

THE COURT: —you show a decrease. That was a projection, was it not? I mean that is not a fact.

THE WITNESS: That's a projection.

THE COURT: Why did you predict that? Or explain your reasoning.

THE WITNESS: I'll explain the methodology; I'll be glad to, your Honor.

You notice that we have 35.8 for '59, 36.6 for '64, 36.1 for '66, 34.8 for '68 and 37 for 1970. Now, I produced a weighted average of these percentages of the market and concluded that that weighted average was 35.9.

Now, I did this deliberately.

In 1970, of course, we had the full impact of the Union Trust Company merger, and it's observable when you examine the historical pattern of Connecticut's banking history each major merger produces, if you will, a kind of bump in the marketplace which subsequently disappears.

THE COURT: And goes down?

[923] THE WITNESS: And goes down.

THE COURT: Why wouldn't that occur in this case?

THE WITNESS: It has, in fact, occurred. That accounts for the decline, the trend. If you look at 1970, it was 37.0—

THE COURT: That is exactly what I am looking at.

THE WITNESS: In '72 it's 35.9. So I've taken account of that decline.

THE COURT: So, if these two banks merged in this case and you knew it back in 1970, when you were projecting, you would be taking a bigger dip than the one you have already taken because of the Union-New Haven Trust, would you not?

THE WITNESS: Not necessarily bigger. Certainly I've taken into—your Honor, the tables of columns B and C do in fact take into account—C takes specifically into account the merger and the divestiture as proposed, as does—B takes into account the proposed merger, and C takes into account the merger with the divestiture in the MODA area, the Milford-Orange-Derby-and Ansonia area.

[924] THE COURT: Obviously I am missing something here. I am anxious to make it clear.

BY THE COURT:

Q We see a very nice increase from 1968 to 1970 in the next six banks in column A; right?

A Right.

Q They went up a little less than three, but that is pretty healthy; right?

A Yes.

Q Then, you say, "Well, I took a dip because Union-New Haven merged"; am I correct?

A Yes.

Q How comes it that when we have two other mergers, City Trust and the Waterbury National and then First

New Haven and Connecticut merging, the percentages start to rise, so that in columns B and C your figures are higher than in A?

A Forgive me, your Honor; I think you are mistaken.

Q Okay.

A Would you look at column B—

Q Yes?

A —and look at 1970.

Q Yes.

A The figure there is 40.5; am I correct?

Q Oh, yes.

[925] A And the figure of 1970 is 39.2.

So there is in fact a decline.

And then, if you will look at column C, it is 40.0 for 1970, and then for 1972, which is the projected year, 38.7.

Q Then may I ask you this—and maybe I will be with you from that point on:

Why in 1970 did you predict what you did, 37 percent, and with another merger you predicted 40.5? Unless I have missed something in reasoning and in logic, if I had to do it I would have—my 1970 column would have read as follows, perhaps: 39.2, 37, then I probably would have put 35.4 and then 32.0.

My logic is wrong, I know that; but tell me where.

A Let me start by pointing out, if I slipped—if I used the word "projection" for '70, '70 is in fact an actual figure, whereas '72, '74, '76, '78, '80 and '82 are projections.

[926] Q I see.

A So that '70 is, in fact, the figure that the records provide. We do not have '72 yet, because the year's not ended. But to go on from this, one of the problems one faces is how many numbers does one take to produce a trend, and the most easy answer is that one observation does not a trend make.

So that I observe '70 as high, either I say '70 is something that's going to persist forever, although it is completely out of pattern, or I go back and look over the years, and I have there eleven or twelve years to be observed, and I say, what is the pattern that emerges from com-

parison of the pattern in the twelve years, it is on that basis that I conclude that a better basis for extrapolation in column A was the behavior of the concentration ratios over that period. '59 to '70, that represent actual figures

The same logic, of course, was used for the first column, there, these are actual figures, and working out the trend which in this case was a fairly steady upward trend, and even correcting it downward somewhat, because I'm a little conservative as to where these figures —I don't want to have them explode way—I found that the largest two banks had, in fact, a steady increase.

The next six, examining the record of the years from '59 and '70, had a fluctuating behavior, so that looking at [927] this chart, in effect, then what you do is you observe the movements around the line and you try to find a line such that it represents these observations so that up to 1970 the circles are, in fact, actual observations, and the line drawn, the least squares line, as it is called, between these relationships is designed to reflect that pattern.

Now, having obtained that line, we simply extend it, in much the same way the technique for the extrapolation in the Hartford bank is to look at the observations that take place during the period, and you will notice that in —well, in this case, I simply extend that line, and so I obtain a diagram which shows that, in my opinion, based upon extrapolation, the Hartford share will continue to increase, the share of the next six banks, regardless of what they are, will remain steady.

Line 3, you will notice, shows what would happen, that's the dotted line, lying parallel but above Line 2; Line 3 shows what would happen based upon Column B if the merger had taken place and were extended, essentially continuing steadiness, no real growth in the share—no growth at all—in the share of the next six banks after the merger.

Taking into account the fluctuations which took place in the period in which the observations are recorded, have I cleared the matter up for your Honor?

THE COURT: Well, I just better not comment.

[928] Thank you for answering the question as you have.

Go ahead, Mr. Reycraft.

BY MR. REYCRAFT:

Q Doctor Stokes, have you gone on to analyze the capital structure of the banks in Connecticut and tried to project similar trends?

A I have. These are diagrams—charted—actually, diagram D-14 and chart D-15. This is a very simple picture. All we have done here is to trace the increase in capital surplus in undistributed profits, the so-called capital of a bank for each of four banks, Hartford National, Connecticut Bank and Trust, Connecticut National and First New Haven, from the year 1950, and actually from six on each of the years through 1971.

What diagram D-14 does is simply to trace this, and you will observe in looking at this that the pattern is such that the gap between either of the two large banks and the—either of the two smaller banks continues to grow.

Q These are actual figures, are they not?

A These are actual figures, these are not projections, and what they show, for example, is that Hartford National Bank in a 10-year period added some—nearly 37 million dollars in capital structure, and that addition alone was larger than the structure of Connecticut National Bank in 1970.

[929] Q What did Hartford National, in fact, do in terms of its capital structure between 1950 and 1970?

A Well, now, I can interpret that question a number of ways, it acquire some of that capital through merger, it acquired most of it through undistributed profits and through the sale of additional stock. It used that capital to improve its market position, including, for example, the acquisition of Lincoln National Bank in Stamford, and the General Bank and Trust Company in New Haven and other banks along the line.

Q But it increased its capital position from 14.2 million in 1950 to 76.9 million in 1970, is that right?

A 14.2 to 78.4.

Q All right. I was using 1970.

A Yes. '70, '70, I'm sorry. I was reading backwards, the bottom of the column of CBT, yes, that was the effect. Let me be clear that there existed no Connecticut Bank and Trust Company in 1950, thus the figures for 1950 are composed figures. Composed of the pre-existing organization.

Q All right. Doctor Stokes, did you make any projection with respect to the commercial bank deposits which might be held by Connecticut National Bank and First New Haven in the future?

A I did. I don't think I included them here.

Q Do you have D-17?

A D-17. Those represent the share rather than— [930] yes. What appears in D-17—

THE COURT: Excuse me. Before we get to that, explain to me where my logic is wrong here. Let's take 1960 to 1970, Hartford National Bank went from 40 to 76, right?

THE WITNESS: That's right, 77 almost.

THE COURT: And on the other hand, though, CNB went from 13 to 25, so in percentage they were keeping pace with each other, only on a much different level.

THE WITNESS: Yes. It is the unfortunate logic of numbers, your Honor, that even to maintain exactly the same pace in additive terms is to fall further behind in relative terms. It would not be enough for Connecticut National simply to double and maintain the same rate of growth as Hartford National to gain ground, it is like in speeding if you only go as fast as the fellow ahead of you, you would never catch up, so the relative position of Connecticut National, despite this rather outstanding performance remained far behind that of Hartford National. So that doubling as—just matching the doubling was not sufficient.

THE COURT: Yes, but if you are keeping pace, you [931] are still not losing ground.

THE WITNESS: No. This depends upon what one defines as losing ground. But if you used—

THE COURT: Well, if you start out ten miles ahead of me in your car, and an hour from now you are just ten miles ahead of me, I'm not doing too badly?

THE WITNESS: That's true, but suppose we add a little bit of a kicker to this, suppose the reason for the going was to get something when someone got to that place, if you were ten miles behind, you would not have gotten what the person ten miles ahead of you would have gotten.

THE COURT: But Hartford National started out in —say—take 1970, with three times the capital that Connecticut National Bank has? I mean for Connecticut National Bank to catch up a lot of things have to happen even at the start. I mean I can read these terms, I'm just saying this, CNB is not being hurt at all, in fact, it's doing pretty well, in fact, it's keeping pace with the two giants who are moving ahead. Maybe that's not a good thing, maybe it's a bad thing, but I'm just saying—for example, if the 1970 figure—1971 figure were, say, 14.5, and the other two columns showed continual gain—I mean a lot of [932] conclusions could be drawn from that. But one could be—could say that CNB is certainly not even keeping pace in a relative way, right?

THE WITNESS: Yes.

THE COURT: But here they're doing pretty well, considering the head start that the two Hartford banks had on it?

THE WITNESS: Let me make several comments. As I said, in a kind of a footnote, CB&T did not exist as a corporate entity in 1950, thus, I think, oh, perhaps less than—it was more comparable in size to Connecticut National then in its prior form, so that CB&T acquires it head start through a merger, and that merger had taken place between '55 and '60, as I recall, or took place in the middle—mid—in the '50's, Hartford National, however, which is an organization which did not come into existence as a consequence of a major merger, the second thing I would observe is that it is what one is able to do with acquired capital that is important, and in this case what one is able to do is, of course, first of all, to define lending limits, secondly, to acquire new offices, penetration of the new markets, thirdly, to institute new services.

[933] I should also point out—

THE COURT: I understand all that, Professor.

THE WITNESS: I should say the earnings on this—

THE COURT: I didn't know that the point that you were making went to that scope. I thought you were saying: look, by goodness, Hartford National Bank doubled its capital growth in ten years, it went from 40 million to 76 million, and I just turned to you and said: well, Connecticut National went from 13 million to almost 26 million, they doubled, too, I didn't mean to intrude upon other areas that I'm sure you are going to get into. I just said both of them are doing pretty well.

THE WITNESS: I think that observation is entirely correct. I think the reason for our doing this was, of course, to make other points.

THE COURT: Well, maybe we should get to the other points tomorrow morning.

MR. REYCRAFT: Very well, your Honor.

THE COURT: This might be a convenient time to recess for the day, so we'll recess until tomorrow morning at 10:30.

(Court adjourned at 3:55 p.m.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 14,583

UNITED STATES OF AMERICA, PLAINTIFF

versus

THE CONNECTICUT NATIONAL BANK and THE FIRST NEW HAVEN NATIONAL BANK, DEFENDANTS

and

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, INTERVENOR

United States Court House
915 Lafayette Boulevard
Bridgeport, Connecticut
October 26th, 1972

Before:

Hon. Robert C. ZAMPANO, U.S.D.J.

Appearances:

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FORD BARRETT, Trial Attorney

[936] THE COURT: Are the parties ready to proceed?
MR. CLARK: Yes, your Honor.
MR. REYCRAFT: Yes, your Honor. Doctor Stokes.

CHARLES J. STOKES, having been previously duly sworn, resumed the stand and testified further as follows:
THE CLERK: You may be seated, Doctor, you have been sworn.

DIRECT EXAMINATION CONTINUED

BY MR. REYCRAFT:

Q Doctor Stokes, yesterday we were discussing Exhibit D-15, entitled: Growth and Capital Accounts of Four Connecticut Banks. My arithmetic on this exhibit indicates to me that between 1960 and 1970 Hartford National Bank increased its capital accounts by 36.8 million dollars, Connecticut Bank and Trust Company increased its capital accounts by 40.4 million, Connecticut National Bank increased its capital accounts by 12.2 million, and First New Haven, during the same period, 9.3 million. Is that substantially correct?
A I would say that's substantially correct, yes.

Q What does that indicate to you with respect to the relative growth rates of the capital accounts of these four banks?

A It indicates that in terms of absolute growth—I [937] have chosen the word "absolute" carefully—the Hartford National and the Connecticut Bank and Trust Company have been growing at rates substantially faster than Connecticut National. The relative rates are approximately—

Q But if you start a relative growth rate from a low base, does that indicate to you that on a projection, just as a matter of mathematics, that Connecticut National would ever catch up even though its percentage increase might be greater from a low base?

A It is certainly continuing these growth rates, which suggest that there would never been any catch-up point. I think it is also important to point out that it is what the additional dollars do in terms of the potential power of such dollars that really matters.

Q So that notwithstanding the relative growth rates, Hartford National increased its capital accounts over three times as much as Connecticut National over this period and about four times as much as First New Haven?

A Correct.

Q Doctor Stokes, will you refer to Exhibit D-16? Is this an exhibit which was prepared at your direction?

A I played some part in it.

Q And what does it indicate?

A It spells out the comparative growth statistics of a [938] Connecticut commercial banks, the Connecticut National Bank, the First New Haven National Bank, the City National Bank, the State National Bank, Union Trust, Colonial Bank and Trust Company, what was Second National Bank of New Haven is now Second Bank of New Haven, the Connecticut Bank and Trust Company, the Hartford National Bank and Trust Company.

In each case there is a measurement of the increase in the number of branches and the percentage increase, the increase in total assets and the percentage increase in total assets. Increase in total deposits, and the percentage increase in total deposits. Increase in equity

capital, the percentage increase in equity capital and operating earnings, and the percentage increase in operating earnings.

In addition, there's appended to it a total change for each of these—for a total of these banks, and figures showing the CBT share of each of these indicators of growth, the CNB share, the First New Haven share and the Hartford National share.

There are further appended to this comparative growth statistics chart certain information regarding external growth that is acquired through merger.

Q Doctor Stokes, what does it show with respect to the relative position of Connecticut National Bank in each of the categories that you have asked to be included on this exhibit?

[939] A Well, for example, in terms of the number of branches, this is a percentage increase, whereas the greatest percentage increase was that activity on the part of Colonial Bank and Trust Company based in Waterbury, 138%, it turns out that as you read across, Connecticut National Bank had, in fact, the smallest percentage increase in number of branches.

Q Of the four banks?

A Actually, of all the banks listed on this chart.

Q Okay.

A Not only of—as compared to First New Haven or City National or Union Trust, but compared with all of them, or the average of all of them.

Total assets, here again, though, it was not at the bottom, it was clearly not at the top in terms of total asset change, the greatest increase in total assets occurred on the part of Union Trust, and probably can be explained by merger, CBT and HBN, so that whereas, for example, Colonial increased assets by a hundred percent, Union Trust by 99.1%, CNB by 45%, there were smaller rates of increase than this, but this was clearly in the lower portion of the rates of increase.

The same is true in deposits. In general, while Connecticut National has not shown the smallest increase, it is clearly not at the top. Nor is it among the leaders in equity capital growth, it is, however, among the leaders in the increase in operating earnings.

[940] BY MR. REYCRAFT:

Q Is that the only one of the shares of the totals of these banks in which CNB showed an increase from 1965 to '70?

A Well, now, if we may interpret your question, it has shown an increase in every case, but, in terms of the relative position, since—

Q It shares the total?

A It shares the total—it declined in every case but this one.

Q In operating earnings?

A Yes.

Q What does it indicate with respect to First New Haven's share of the total relatively since 1965 and 1970?

A In all of these—what can be called performance contribution, First New Haven has been equally weak, in some cases weaker.

Q It has declined in each case; is that correct?

A Yes.

Q Dr. Stokes, was D-17 also prepared at your direction?

A It was.

Q Would you tell me what that exhibit signifies to you.

[941] A D-17 spells out the combined share of commercial bank deposits held by Connecticut National Bank and First New Haven Bank treated as if they were consolidated, had existed as a consolidated bank, from 1959 on.

Column A shows what would have been the case without the divestiture and extends that figure to 1982; and column B takes into account the divestiture. The differences are accounted for as of 1970; thus, you will observe that from '59 through '71 these are actual figures.

Had this bank been in existence, its share of all commercial bank deposits in Connecticut would have decreased from 13.8 percent to 11.3 percent; and this, of course, is already evident from Exhibit D-16, where the divestiture column is some five-tenths of a point smaller, as I say, based upon '71's—70's figures, and the decline there was from 13.3 to 10.8.

On a very conservative basis we extended that trend through to 1982, and, in fact, simply concluded that there would be little, if any, further decline. We could, of course—if we continued the rate of growth on a pure extrapolation, it would push it further down.

Q Can you tell us briefly how you arrived at those projections up through 1982?

A All right.

[942] The projections—first of all, from '59 to '70 these were simply the combining of the published commercial bank deposits statistics. Then from 1972 through '82 these figures represent an extrapolation, but a very conservative extrapolation, from those figures.

Q Tell us briefly how you did the extrapolation. Just straight-line extrapolation?

A This is obviously not a straight-line extrapolation, because straight-line extrapolation would have led me to conclude that the actual share might have fallen as low as 8 percent.

Q But you made some assumptions?

A But I made the assumption—you see, in effect, I took into account that it was possible that the merger would be in existence from '72 on and that we have observed that each time a merger takes place there is a change, a temporary change, in the structure of banking; and we assume that in this case this would have the effect of retaining the share then achieved.

Indeed, one could ask, why the merger?

Q Dr. Stokes, you have also asked that D-18 be prepared.

Will you tell us what that means to you.

A D-18 is taken from the reports of the Federal [943] Deposit Insurance Corporation. There are certain typographical errors in it, but, as it stands, what it does is to present—these are—may I point out what these are in case they appear.

For 1968, in the first column, where it says "Percentage of Total Deposits Held By Largest 5 Banks," for New Haven the figure should be 92.2.

THE COURT: Is there a correction on it?

MR. REYCRAFT: Yes, your Honor. D-18 has a correction, and Dr. Stokes will give it.

THE WITNESS: All right.

A (Continuing) For New Haven, 1968, the figure should be 92.2 under the New Haven column, and the Bridgeport column for 1970 the figure should be 98.7. Those are the only errors that arise from my sevens looking like fours, occasionally.

All right, now, what this shows is the—we attempt here to measure the effect of the merger and divestiture as proposed on the Bridgeport SMSA, New Haven SMSA and the combined SMSA. The assumption here is that we're dealing with a market extension merger, and so we're comparing two.

First of all, what was the situation in Bridgeport as reported by the Federal Deposit Insurance Corporation in [944] terms of the concentration ratio for the five largest banks? Now, these are the banks in disembodied form as I have described them. That ratio fell from 99.1 to 98.7, a small decline, in Bridgeport, over the four-year period from '66 to '70. It fell from 93.5 through 92.2 to 91.1 in New Haven, a somewhat more significant drop.

Now, if we were to combine the SMSA's and to work out the concentration ratio after the merger but before the divestiture, now in this case what we have done is to combine the two banks, simply add them together, their proportions in Bridgeport and in New Haven, take that as a share of the total, combine the deposits of Bridgeport and New Haven SMSA, and thus this bank would have had 91.7 in '66, 90.2 in '68 and 88.2 in 1970.

Q Dr. Stokes, excuse me for interrupting, but can you tell us why it is that the concentration ratio in the combined SMSA appears to be lower than the concentration ratio in either of the SMSA's separately?

A This is one of the objectionable features of an SMSA—pardon me—of a concentration ratio. It tends to vary with the size of the SMSA, and, other things being equal, the smaller the SMSA the larger the concentration ratio; and vice-versa, the larger the SMSA, the larger the concentration—the smaller the concentration ratio.

[945] And here we see an evidence of this as we combine two SMSA's to produce a larger marketplace. The

concentration ratio does in fact fall. This is, of course, traceable in part to the shifting positions of banks as we rearrange them in the new extended market.

Then we took into account in the last column over the concentration ratio after merger and after divestiture, and these give us figures of 89.2 had the bank existed in '66, 87.4 had it existed in '68, and 85.1 in 1970.

Q This assumes, does it not, that the banks were merged in 1966 and that the divestiture had taken place in 1966, in the last column?

A Correct.

Q And the three notations under "Concentration Ratio" after merger and after divestiture are on that assumption; is that correct?

A All on that assumption.

Q Now let me ask you another question, Dr.—

THE COURT: What would be the five largest banks?

THE WITNESS: In the new SMSA—incidentally, the FDIC, your Honor, the FDIC, does not identify those banks. It calls them A, B, C, D and E. One has to be familiar with the banks to try to [946] identify them. And A, B, C, D and E in any given year may not be the same banks in any other year. So that the designation is done so as to preserve identity of the bank.

But, on the assumption that we do know how to decipher A, B, C, D and E, the answer to the combined SMSA question would be that the First New Haven would have been the largest, the Connecticut National second largest—I'm trying to remember; I know it would have been Union Trust, then City—I'm sorry, City National would have been third, then Union Trust, then Second National. I think that would have been the order in which they would have appeared in 1970, to be sure, and I think that's the way they would have appeared in every other year, except that prior to 1968 and 1966 it would have been the Union New Haven Trust Company rather than the Union Trust Company.

THE COURT: I am confused. I thought this took into account the merger, this chart.

THE WITNESS: This chart is derived from the Federal Deposit Insurance Company's biennial reports—Cor-

poration's biennial reports; and, as I've said, the banks are not identified. [947] Whatever merger had taken place during that year or whatever acquisition had taken place would have been reflected in these figures.

But, in order to discover what the names of these banks were, I asked FDIC, and FDIC told me they could not tell me. They could, however, tell me just this: where the headquarters were located. Disclosure rules do not permit them to identify the banks.

So one has then to go to the—to the figures which are available and begin to try to identify what we're talking about. But A, B, C, D and E are likely to have been the banks in 1970 which I described.

THE COURT: You see, I must understand these charts or they just won't be of any value to me.

THE WITNESS: This is confusing.

THE COURT: Do I understand the chart which states Bridgeport, 1966, 99.1, five banks in Bridgeport area—

THE WITNESS: Correct.

THE COURT: —held 99 percent of the total deposits in that area?

THE WITNESS: Correct.

[948] THE COURT: Okay. Obviously, one of the five banks in Bridgeport was CNB?

THE WITNESS: Correct.

THE COURT: Do you know or do you have a reasonable belief as to which—

THE WITNESS: Which was number one?

THE COURT: And which were the others?

THE WITNESS: I think so.

I think in the case of Bridgeport or New Haven it is easy to identify.

You will notice that at the bottom, your Honor, you will see percentage of deposits held by largest bank. We're certain that the 41.6 percent in 1966 held by bank A was, in fact, held by Connecticut National.

THE COURT: Okay.

THE WITNESS: And it was Connecticut National in '68 and Connecticut National in '70.

THE COURT: All right.

THE WITNESS: We're certain also that in New Haven the 42.8—

THE COURT: Let's stay with Bridgeport.

Do we know the other four, or do you have a reasonable guess on that?

949 THE WITNESS: Yes, I would say that the other four in Bridgeport, the Bridgeport SMSA, were Connecticut National, City National—what would have been next? I think Lafayette would have been next—

THE COURT: Would chart D-16 help you at all?

THE WITNESS: It might, except that these are derived from a somewhat different source.

I'm trying to identify—I would say that it was Connecticut National, City National, Lafayette, State National and First New Haven.

THE COURT: All right. Now let's do the very same thing with column two, New Haven.

THE WITNESS: All right.

In the case of New Haven, I would judge—incidentally, this would be different in each year, but let's take 1966, since New Haven had undergone rather more changes—it would have been in 1966—First New Haven would have clearly been first, the second in that year would have been Second National, then this would have been followed by Union & New Haven, this would have been followed then by Tradesmens National, and—I don't think CNB would have been fifth in that case. I'm [950] afraid number five slips me at the moment. Let's see, there would be—General Bank is way down the list, but it certainly would have been—the first four are easy to identify; the last—oh, the last would probably have been—yes—Hamden National.

THE COURT: All right. Now we go to column three for 1966.

THE WITNESS: All right.

THE COURT: You are there saying let us merge CNB with First New Haven? Isn't that what you are saying in column three?

THE WITNESS: That's correct.

THE COURT: And the concentration ratio drops; is that correct?

THE WITNESS: Correct.

MR. REYCRAFT: By combining the two SMSA's.

THE COURT: Right.

You are saying the answer to that is that when you combine the two SMSA's you have a bigger market, and this is something to be expected?

THE WITNESS: Yes.

THE COURT: Am I correct?

What banks, in your opinion, would be listed [951] as the five largest under column three, therefore?

THE WITNESS: All right. These banks would have been in 1966: First New Haven, Connecticut National—

THE COURT: I thought they were merged.

THE WITNESS: I'm sorry—Connecticut National, First New Haven, then the next would have been City National, then there would have been Second New Haven—

MR. REYCRAFT: Union Trust?

THE WITNESS: —then Union Trust.

Now what have we got, four?

MR. REYCRAFT: State National?

THE WITNESS: No. Number five would have been Connecticut Bank & Trust. Let me see. I'm sorry—yes, State National—no. Stop to think about those; I don't have the figures right in front of me.

As I recall, if I combine State National—First New Haven and Connecticut National, I'm going to get in the vicinity of some 400 million; then I go to the next bank in size, which would be City National, at around 160 million; then I'd go to Second National; Union & New Haven Trust; and [952] the whole question is whether or not Tradesmens was bigger in that year than State National.

THE COURT: All right.

Now, of the 91.7 percentage, of that number how much would be attributed to the merged—the resulting bank as a result of the merger between CNB and First New Haven?

THE WITNESS: That information is contained on the bottom of this page.

THE COURT: Are you going to get to that? I will wait, then.

THE WITNESS: 44.7 percent.

THE COURT: I see.

THE WITNESS: 44.7. This is for any given bank. So 44.7 percent.

THE COURT: So, if the merger had gone through in 1966, of the 91 percent of total deposits held by the five largest banks, the resulting bank in our case would have held approximately half of the total deposits?

THE WITNESS: Correct.

THE COURT: And that is in the combined SMSA?

THE WITNESS: Yes.

THE COURT: I understand that much. Okay.

[953] Now, if you want to take it from that point, go ahead, Mr. Reycraft.

[954] BY MR. REYCRAFT:

Q Now, Doctor Stokes, let me ask you another couple of qualifications on this exhibit. Does this exhibit take into account at all the entries into Bridgeport and Hartford—I mean in Bridgeport and New Haven of the Hartford banks?

A It has to.

Q Does it take into account subsequent to 1970? Obviously it does not?

A Obviously, beyond 1970, no. In answer to that first question, let me point out that by 1970 bank number five in New Haven was—that is looking at the first set of figures—in the 91.1%, by this time the Tradesmen's National has been acquired, and the fifth largest bank in Connecticut Bank and Trust Company.

Q And again ranking it fifth on a basis of FDIC figures on the deposits which originated in its offices located in New Haven is that correct?

A Yes. Only on the—

Q And without giving any attribution to its business held in any other area?

A It is disembodied.

Q So what does that indicate to you with respect to the trend of concentration?

A In every case, the trend of concentration is downward [955] with or without the merger.

Q All right. Doctor Stokes, have you participated as a consultant or a witness in de novo branch applications in the State of Connecticut?

A I have appeared as a witness before the State Banking Commission, I have prepared such applications, I have been consultant in such applications.

Q What factors are taken into account in such applications?

A Well, there is a standard set of formulae required both by the federal—by the Federal Deposit Insurance Corporation, by the Federal Reserve and by the State Banking Commissioner.

For example, if a de novo branch is to be established, shall we say, in Stratford, take a recent case, the bank is required to identify its potential—what it thinks the market is in demand deposits, and to identify its potential competitors and their actual size, what proportion of that it expects to get, and it is required, also, to identify the savings market and to indicate by individual branch in the potential market what it thinks the shares are and what share of that market it can expect to get.

It is then required to project these figures over a three-year period, and, indeed, demonstrate that as a consequence of the growth the operation will be making even within [956] that five-year—within that three-year period.

Now, as a part of this, a de novo application must spell out all other indicators of income change, of change of economic character of the neighborhood, in order to demonstrate that, in fact, the branch is not only liable to be viable, but is, in fact, needed.

Q Have you observed that banks tend to branch de novo into areas in which they do or do not have banking business?

A The tend to follow their business. As a matter of fact, the forms which are used normally ask whether or not there exists business in this area, and to the extent that there does, this tends to strengthen the application, business which the bank has already been conducting.

Q Are you familiar with any applications, de novo branch applications, in which a commercial bank has applied for de novo branch in an area in which it has substantially no business?

A I do not know of any.

Q In your opinion, would this be an unusual application?

A It would be an unusual application and it would—this is something called occasionally leap frogging. It is a rare, rare exercise.

Q All right. Do you have an opinion, then, generally as to whether the area in which a bank operates its offices is generally the area in which it draws—from which it draws [957] its business?

A Yes.

Q What is that opinion?

A Well, my opinion is that the area in which—which a bank serves and which a bank attempts to serve is the area from which it draws its business. It may, in fact, draw some business from elements—from areas from which it is either debarred from entry by state law, by state lines, federal laws, but generally it is where it draws business.

Q Have you examined Defendants' Exhibit 1 and 5 in this respect?

A Yes, I have. These which I saw today, show me on the part of the Connecticut National Bank and the First New Haven, all of the towns in the State and the amounts of—as well as percentages of accounts and amounts in each such town, as well as amounts outside the State where it is relevant. It is observable that by and large First New Haven and Connecticut National draw certainly the overwhelming share of their deposits from the towns which they currently have branches in.

Q And what does that indicate to you with respect to the banking markets for those two banks?

A That to a—certainly, to a very significant extent the banking market is defined by the location of the offices. [958] Q Is it your opinion that these two banks serve substantially the same or different, or would you care to qualify it otherwise, geographic markets?

A Well, they do have different—in the sense that the New Haven Bank's markets are in New Haven County, lower New Haven County and the shore—well, there is some overlap at the—that Milford—the MODA area, Milford, Orange, Derby, Ansonia—Connecticut National is largely to the west of this line and somewhat to the north.

Q If you were to assume that—

THE COURT: Excuse me.

MR. REYCRAFT: Excuse me.

THE COURT: Let's take D-1. Now September 30, 1971, if I am reading that chart correctly, in Fairfield County—some of this has been cut off, but I think I know the towns—Bethel—if I read this correctly, when they say CNB had 1,008 accounts in Bethel, Connecticut—is that correct?

THE WITNESS: That's correct.

THE COURT: Now, next we go to the percentage of total, that means it's 1% of its accounts in Bethel CNB had?

THE WITNESS: No, it means that 1% of the total accounts of Connecticut National are in Bethel.

[959] THE COURT: Oh. Okay. And then the figure next to it is the amount of dollar business from Bethel?

THE WITNESS: 770,000.

MR. REYCRAFT: Again, it is a percentage of the bank's total business, your Honor.

THE COURT: And then the next one over is the percentage of the bank's total money on demand deposits—

THE WITNESS: Yes.

THE COURT: —is that correct?

THE WITNESS: That's correct.

THE COURT: Or on their entire business, including loans and everything?

THE WITNESS: Yes—no, sir, of the IPC demand deposits, the individual, partnership and corporation demand deposits.

THE COURT: Now let's go to the next one. Bridgeport they have over 20,000 accounts, right?

THE WITNESS: Yes.

THE COURT: And that accounts for 20% of CNB's business?

THE WITNESS: Correct.

THE COURT: But does this chart tell me what percent of the total business CNB has in Bridgeport?

[960] THE WITNESS: It doesn't tell you. This particular chart would not tell you what CNB's share was of all IPC deposits in Bridgeport. That would appear in other information.

THE COURT: So at least this chart is telling me that—at least the column we're talking about—is the percentage of CNB's business that it gets from Bridgeport with respect to demand deposits—

THE WITNESS: Correct.

THE COURT: —correct?

THE WITNESS: Correct.

THE COURT: What does IPC mean?

THE WITNESS: Individual, partnerships and corporations.

THE COURT: All right. Now, let's go down the list so the record will be correct. I assume the next one is Brookfield?

THE WITNESS: Yes.

THE COURT: And is it Danbury?

THE WITNESS: Danbury.

THE COURT: Darien?

THE WITNESS: Darien.

THE COURT: What would the next one be?

THE WITNESS: Easton.

[961] THE COURT: Fairfield? Greenwich, Monroe, New Canaan, New Fairfield, Newton, then Norwalk, Redding, Ridgefield. Would the next one be Shelton?

THE WITNESS: Shelton.

THE COURT: There's no divestiture there in Shelton, is there?

THE WITNESS: No, this is the actual figure as of that date.

THE COURT: Okay. And what is the next?

THE WITNESS: Sherman. I think it is Connecticut's smallest town.

THE COURT: Well, we'll say it twice so we'll give it emphasis in this trial. Sherman. Stamford, Stratford, Trumbull, and what is the next one?

THE WITNESS: Weston.
THE COURT: And what is the next one?
THE WITNESS: Westport, Wilton.
THE COURT: All right. Thank you.
Go ahead, Mr. Reycraft.

BY MR. REYCRAFT:

Q Doctor Stokes, based on your examination of Exhibits D-1 and D-5, and assuming the divestiture proposed, is it your opinion that the proposed merger will eliminate any significant competition between the two banks?
[962] A Yes, it would—if the MODA overlap were eliminated, it would certainly remove the competition.
Q I think your answer is clear, do you mean—
THE COURT: Would you repeat it?
Q Will you repeat it?

(Question read.)

THE COURT: Your answer was clear, but I'm not sure Mr. Reycraft felt you understood the import of the question.
MR. REYCRAFT: Quite correct.
THE WITNESS: It's clear I did not.
THE COURT: Go ahead, I'll give you a chance to amend it.
A My reaction would be that if the merger took place, of course, the two banks would no longer be in competition with each other.
Q Again, you are assuming a divestiture?
A Well, either—either or. If the banks were, in fact, merged, they would no longer be in competition. As to for the competitive structure of the marketplace, we have already discussed that.
THE COURT: Well, that would necessarily follow—
THE WITNESS: Yes.
[963] THE COURT: —if they merged, it would mean no competition?
THE WITNESS: That's why I may have misunderstood the question.
Q Well, my question is really directed to the state of affairs prior to the merger on the assumption that the divestiture proposed, in fact, takes place, would there be

significant competition, existing competition, between the two banks eliminated by the merger?

A All right. Absent the merger, but assuming the divestiture, then, very clearly the competition would have been lessened, to a minimal degree between the two banks if the—if the divestiture took place.

Q All right. Doctor Stokes, have you had any opportunity to participate in the discussions in the State concerning added powers for savings banks?

A Yes, I have. I have appeared as a witness before legislative committee, and, indeed, there is a local president who did his best to keep me from getting out of Bridgeport one day to make sure I didn't testify.

Yes, I have participated both in planning some of the material and in presenting it.

Q What is your opinion—what was the nature of your participation in the legislative processes?

[964] A I—I—I have prepared in favor of extension of third party transfer rights to savings banks.

Q What is your opinion of the long-range likelihood that savings banks will obtain additional powers?

A Well—

MR. BENTKOVER: I object to that. That would require speculation on what the legislature is going to do, and I don't think he's qualified to do that.

THE COURT: Yes. It certainly would involve that, but, on the other hand, I think some other witness really dealt in heavy speculation as to what the legislature might do and might not do, I think it was Doctor Myles. I'll accept the testimony, but I will take your objection to it in account with respect to weight, not necessarily admissibility.

Are you off the competition thing now?

MR. REYCRAFT: Yes, sir. Yes, sir.

THE COURT: May I ask you this: would you talk to me a little bit more before we get to the savings banks about the effect of the merger on competition between these two banks, in your opinion?

You said something just before we went to the savings banks topic—you started out by saying: absent the merger, and then you said—you kind of [965] qualified things,

and you said that there must be a divestiture, all those things are in there, and I would like you to take them a little bit more slowly and give me your opinion as to what you feel the competition is between these two banks, if any, at the present time, with no divestiture and so forth?

THE WITNESS: Let's consider the situation.

THE COURT: Yes, consider the situation one step at a time.

THE WITNESS: Your Honor, let me do it as follows: let's consider situation A. In situation A we're as we are now, two existing banks, they do have branches close to each other in certain areas between the two—along the edge of two SMSA's. Situation B, a divestiture has taken place, for whatever reason, so that there are no longer such overlapping—competition within those area.

In situation C, would be if the merger had taken place. Situation A is today—

THE COURT: Wait a minute. The merger had taken place with divestiture?

THE WITNESS: With divestiture.

THE COURT: All right.

THE WITNESS: I can make situation D if you wish.

[966] THE COURT: All right. I think it might be important, we're going to get your opinion, we might as well get them on all aspects. Let's make D, without divestiture.

THE WITNESS: Situation A—

THE COURT: Yes?

THE WITNESS: —is today's situation, a situation that has been in existence now for some years. The question has to do with competition and in—in terms of the two banks themselves, although they do overlap, they're not largely an effective competition in the sense that they allow their policies to be influenced by this overlap.

Now, it could be that in the marketplace we're talking about there is significant consideration of what happens down the street. But since the larger share of CNB's

business is someplace else and First New Haven's is somewhere else, it is—CNB considers itself, I would suspect, to be competing with State National, if it doesn't, it would surprise me, and City National and such other banks as are found in the majority of the marketplaces, whereas we have shown it is in existence. The First New Haven is much the same way.

[967] But admittedly, in those areas in which they are close to each other, there is some consideration of that competition, and I am using "competition" really in a noneconomic way at the moment, I'm simply saying allowing decisions to be influenced by what others might do rather than counting the number of banks and the like.

In situation A, then, there exists some competition, and would persist absent any of the current discussion if there had been any—any—a proposed merger—if merged could not, largely without much direct impact.

The situation B, as I think I said, was a situation which the divestiture's taken place—

THE COURT: Without a merger.

THE WITNESS: —without a merger—and for whatever reason that arose, then, there would be not even this shadow of competition taking place.

THE COURT: Well, there's no likelihood of that, so let's get to C. I don't think.

THE WITNESS: I offer no opinion on it.

THE COURT: Well, the contract, I believe, for divestitures is contingent on the merger.

MR. REYCRAFT: It is clear, your Honor, that that's [968] in the context of this merger, the divestiture.

THE COURT: All right. Let's get to C.

THE WITNESS: Situation C, the merger has taken place and there is a divestiture. Well, that was the purpose, of course, of exhibit—

THE COURT: Yes—

THE WITNESS: —D-18, to show that, as a matter of fact, what this did was to create a new market, an extended market, the SMSA's combining—if we use those views as a market, and I question those views—if we use those SMSA's, arguendo, as the lawyers like to say—if we use that as the marketplace, then the concentration

ratios would not only be declining over this period, '66 through '70, but would, in fact, be smaller than they had been in prior years and in the same years.

So that the impact would be in that sense to reduce concentration.

Now, in situation D, where we have the merger taking place and the divestiture, then we're over to the fourth column in Exhibit D-18, there it would be even less concentration in this combined market.

THE COURT: Really, it doesn't matter, but I thought C was the merger with divestiture.

[969] THE WITNESS: I'm sorry. I'm sorry. In D—yes.

THE COURT: Now, we have D, merging—the merger without divestiture.

THE WITNESS: All right. I'm sorry. I misstated D. Column—the fourth column over, in D-18, is situation C.

THE COURT: Right.

THE WITNESS: And the third column over is situation D.

BY MR. REYCRAFT:

Q Doctor Stokes, on this same subject do you have an opinion as to what the—how the long-range banking structure of the State might look without the proposed merger?

A I not only have an opinion, I have a fear.

Q And what is it?

A It was that fear that led me to be concerned about this matter. Looking at the matter in detail, in a study I made in 1964 with the assistance of Mr. William Hadda, who was then a graduate student, I took a very careful look as to what was to me—who was a new-comer to Connecticut, a rather unique situation, and in that year, I believe, State National had moved its headquarters, or recently moved its headquarters from Stamford to Bridgeport, and as an economist, this intrigued me, so I began to look into the matter to see what was like—what [970] was happening, and after a careful study of the matter, I concluded that we were simply seeing a trend that was going to be tending.

Now, I pointed out earlier, what had emerged, certainly, in the middle '50's, was a de facto banking district situation, and by whatever rules that this situation was played, each bank apparently tacitly agreed not to get into the other bank's turf. And so there were distinct turfs that were clearly marked, as anyone looked at the map.

Now, it was becoming increasingly clear that what was going on in the '60's was that within these separate turfs there was a good deal of consolidation taking place and the emergence particularly the Stamford banks, converted themselves into much stronger organizations, out of this came the Union Trust Company, as it's now known, and the State National, they were originally actually Greenwich banks, if you examine their histories, and by the middle '60's State National was now out of Stamford and in Bridgeport, and later, of course, Union Trust was out of Stamford and in New Haven.

Now, in this process, then, it was clear that there was a next step. The State had the potential, but it never reached it, of having statewide branch banking, and the question that I sought to answer in this study was when would this emergence of a statewide branch—branch market actually take place.

[971] And I looked it over, and I was concerned, actually, because, as I saw it, there was a likelihood that if this was to take place, the positions of New Haven and Bridgeport, vis-a-viz Hartford would be weakened. And it seemed to me particularly that New Haven was the most vulnerable of these markets, Stamford had by and large disappeared down the drain as a market, in fact, in the middle '60's as a market with control over its own corporate destiny.

So looking forward, I projected at that stage what was likely to happen, the scenario we played around with, who would do what and where, and it turned out to be a pretty good guess.

It seemed to me that examining those banks who had the ability to make the first move, the most likely ones were the Hartford banks. They had the capacity and would, in fact, move, and, indeed, they did, and they moved by—not by de novo branching, as it turned out,

since they couldn't really, indeed, into New Haven, Bridgeport or Stamford, but by acquisition.

THE COURT: And this was approximately what? Middle '60's?

THE WITNESS: This particular—this took place in '69 when Lincoln National was acquired.

THE COURT: Let me ask you this: you—

THE WITNESS: '69.

THE COURT: —as a scholar looking at this [972] situation, before this situation took place, that is: the situation that you thought might come up, that somebody was going to make a move and that this kind of gentlemenly—gentleman's agreement to stay out of each other's territory, that the banking business would be such some day, these are your thoughts in early '70, that somebody would spring out and go on a statewide basis, is that correct?

THE WITNESS: That's correct.

THE COURT: All right. Now, before that happened and your prediction came true, is that good, healthy banking life for a state to have, oh, say, 80, 90 banks, and each one is kind of local, or if they have an area they start to consolidate and get a little stronger, but they're not on a statewide basis, no one is going beyond the so-called—I think you said territory that they—

THE WITNESS: Turf.

THE COURT: Turf, yes—that they carved out for themselves, is that a healthy situation for a State like Connecticut that has New York and Boston, giants, around?

THE WITNESS: I would say that it was not a healthy situation. Basically, the ability of banks—let me [973] be more basic, a capitalistic system requires a very active commercial banking structure, and it can be demonstrated that those communities with the most active commercial banking structure are, in fact, the most fast growing.

Now, it was my opinion that statewide branch banking was a good idea. What I was concerned with was who would do it.

THE COURT: I know you used the word "fear".

THE WITNESS: Yes, and my reason for fear was that I was afraid that unless the—either a New Haven or Bridgeport or Stamford bank moved and become one of the first to become a statewide branch bank, that the Hartford banks wouldn't—since they had already potential strength, would move and establish themselves so firmly that they could not be competed with, and I saw in that scenario the disappearance you see, the centralization of power in Hartford, and my preference would be that in a statewide branch banking system that we have statewide branch banks with headquarters at least in the four or five major centers.

THE COURT: All right. So now we have the situation where you say: okay, this is not healthy for [974] the entire state with respect to banking, that statewide banking might be necessary, it is a healthy thing, particularly in the light of what the Boston and New York banks are doing, and the industry in Connecticut, I suppose, there are a lot of reasons.

Okay. So now you are saying if it comes about, "I hope—I hope it's a Bridgeport or New Haven bank, because the Hartford Bank's got a pretty good—have pretty good strength now, and if the statewide banking business gets in the hands of those Hartford banks, it just makes them that much stronger and weakens, particularly, New Haven," is that correct?

THE WITNESS: Correct.

THE COURT: All right. So now I see at least what you are claiming as your fear.

THE WITNESS: Yes.

THE COURT: Now, your fear came—

THE WITNESS: True.

THE COURT: —true, and we're now in 1969. And now we have the development, I think, I guess it's the Hartford National that made the move?

THE WITNESS: Made the first move.

THE COURT: Made the first move. Now would you carry your discourse on now from—okay. We have the [975] first move unopposed by the government—I believe?

THE WITNESS: Correct.

THE COURT: Let's take it from there.

THE WITNESS: Well, when the first shoe fell, the second fell, then Tradesmen's National was acquired by CBT, '69.

THE COURT: What happened to your fears then?

THE WITNESS: Well, I saw it in process. I said to friends of mine in the banking busines, "I don't see how long New Haven can stand up to this kind of competition."

THE COURT: Because what? We have now one Hartford bank making the move, now the next move is by another Hartford—

THE WITNESS: Yes, in 1970, General Bank and Trust Company is acquired, and now on Church Street we have both CBT and Hartford National.

Now, the question was: how do they get into Bridgeport? And this, I think, is the cleverest trick of them all. They discovered that there existed an industrial bank, largely without any activity at all, over on Stratford Avenue, the Columbia Industrial Bank, and they converted this into a store front on State Street and then from that pushed it into [976] a major operation now on Lafayette Boulevard. So that now CBT was in Bridgeport.

Hartford National had meanwhile acquired a position in Heritage Square in Fairfield. CBT moved into Fairfield on the Post Road. Union Trust, incidentally, had now been created and it had acquired the third largest bank in New Haven, and so the score continued, CBT then moved into Stamford, acquired Atlantic National.

Meanwhile, up in Waterbury, Colonial had been going its acquisitive ways.

THE COURT: Tell me about that.

THE WITNESS: Well, apparently the decision of Colonial had been to try to preserve—see, the context in which decisions are being made is what's the likely pattern after this is all over, so I would judge that Francis White and his associates were in the process of trying to make sure that whatever the final countdown looked like, there would be a good, strong Waterbury bank in it.

And, incidentally, Waterbury National, written up in the Wall Street Journal is an excellent little bank, was acquired by City Trust in Bridgeport.

THE COURT: All right. So now we have got the [977] situation that we have the Hartford—two Hartford banks, not the one that you feared, but now you have got two of them going on a statewide basis, you have the Waterbury bank kind of really building a little blockade around the Waterbury area trying to protect itself. Now, what's the situation as you look at it without this merger that I have before me? How does it look now from at least your—absent the merger, what does it look like?

[978] THE WITNESS: Let me take the call report that I just looked at.

In last year alone—it's in the year—in a year period from September 1971 to September 1972—CBT added two hundred million dollars in deposits. That's awfully hard a pace to match.

As I recall, Hartford National, its twin, wasn't too far behind.

Now, it's observable that that took place in this period in which CBT and HNB now have firm toeholds in New Haven and Bridgeport and Stamford, and it's observable, too, that it took place against the background—a rather extraordinary amount of advertising.

So it would appear that these two banks are moving with considerable speed.

THE COURT: What effect does that have on the State and its banking health, without this merger or without any other mergers?

THE WITNESS: I would judge that the concentration ratio would itself increase, particularly of the top two banks—I think I indicated that in my testimony—and that [979] increasingly the position of these two banks and therefore the Hartford economic power—I don't want to treat it as if it were the devil in any way, but that Hartford economic power would be very, very hard in any sense to meet or match, and increasingly hard to match, or much less to beat.

THE COURT: All right.

Is that healthy in banking terms or unhealthy?

THE WITNESS: I would have thought that a healthy situation would be to have some relative equity, equalness in size, among the top five, six, seven banks, so that Hartford National could be competed with.

Now, admit, from CBT and HNB's point of view, they see their competition as not only the big city banks but also in Boston and in Providence and in New York, of course—New York overwhelmingly—and they are thinking of their size in the light of that competition.

But here in Connecticut, which is a separable market, at least legally, they are now significantly larger than the next bank, Union Trust, and overwhelmingly larger than the next banks beyond that.

[980] THE COURT: All right.

If CNB were a Hartford bank, everything that you know about CNB was up in the Hartford area, and it wanted to merge along the lines of the Hartford National—CBT, that would only increase your fears even greater, would it not?

THE WITNESS: Yes. It would increase my fears. I would say I would have to be a little bit irrational—let me put it this way: I'm pleased that United Bank & Trust and the First Connecticut Bank Corporation has begun to show some competition in the Hartford area.

THE COURT: But now, with CNB in Bridgeport and First New Haven in New Haven?

THE WITNESS: I would prefer to preserve in the State of Connecticut separate and viable banking communities, if at all possible, within this market place. So that I'd like to see New Haven and Bridgeport, Stamford and Waterbury, preserved.

THE COURT: How does that come about?

THE WITNESS: I would say that this merger and possibly other mergers like it—this merger certainly—would be necessary in order for [981] Hartford to have effective competition.

THE COURT: So it is your opinion, therefore, that this merger not only would not lessen competition concentration to a minor degree; it would actually increase it?

THE WITNESS: That's my opinion of the matter.

THE COURT: Because of the banking trends that have been going on—

THE WITNESS: Yes.

THE COURT: —from, would you say, 1968, 1969?

THE WITNESS: I would say that these trends probably began with CBT's formation from a series of smaller banks in Hartford. There was a dramatic change in the structure when CBT emerged. Hartford National had been an old, kind of slow-growing but big bank. CBT made the difference, and from there on you notice a difference—a different scenario in Connecticut.

And it's also true somebody attracted some very young, bright officers who thought they didn't have a future in New York and came to Connecticut to make that future.

THE COURT: That is an important consideration, [982] isn't it?

THE WITNESS: Yes.

THE COURT: When officers start to move around and leave one bank to go to another. Personnel is awfully important in this business?

THE WITNESS: Vital.

THE COURT: Is there anything else you would like to add from your point of view on this point that Mr. Reycraft has asked you about and that I have talked to you about?

THE WITNESS: Well, I think I've spelled out what I thought the scenario was likely to be and why I in fact feel that it's a good idea.

THE COURT: All right.

I asked you about what you thought if this merger were not permitted. Say this merger was permitted. What do you forecast to come after that?

THE WITNESS: I would hope that the merger would lead to a soon entry, if not a required entry, into Hartford. I would hope that it would lead into an entry into Eastern Connecticut. I would hope that it would encourage Union Trust to continue its expansion.

Beyond that, I am certain that the behavior of [983] other banks down the line would be conditioned upon what was happening.

THE COURT: In other words—I cannot think of these banks offhand, but there are banks close to CNB and First New Haven that would say, "Okay, the Hartford National went statewide, CBT went statewide, CNB and First New Haven went statewide; maybe we," meaning the next—

THE WITNESS: Let's pick one out of thin air—it's not quite that thin—Colonial Bank and Second Bank of New Haven.

THE COURT: All right.

They might start thinking about it?

THE WITNESS: Yes.

THE COURT: Let's assume the Government either did not oppose it or, if it opposed it, the courts permitted it, and eventually we see, like you mentioned before, five, six statewide types of banking operations.

Is that a healthy thing for the State?

THE WITNESS: Yes, I would say so. One could then go now to New London and find not just two or three banks but five or six choices; one could go to Putnam or to Torrington or to Sharon [984] and, instead of finding, as one finds now, Hartford National dominates and over here some other bank, throughout the State the people of Connecticut would have a choice among a much larger range of banks to whom there's a—actually an adequate comparison.

THE COURT: Is there any logic or valid logic to this? So, okay, New Haven loses a potential entrant—that's CNB—in the area; the city is closed. But in the area—but look what the merger will do for New London, Putnam—I don't know—Enfield or West Hartford, things like that. So, on balance, it is your opinion over-all that the trend that has been taking place since the middle '60's, with CBT being the catalyst, is a good thing?

THE WITNESS: Yes.

THE COURT: And ought to continue—

THE WITNESS: Yes.

THE COURT: —I suppose—

THE WITNESS: Yes.

THE COURT: —as long as a lot of the giants do not start merging. I don't know; we do not have to get into that. There is no mention of [985] that.

But you do not see the value in halting this trend and letting the other two proceed statewide alone?

THE WITNESS: I would prefer to guide it, but I wouldn't want to halt it in any sense.

May I point out, your Honor, that what I have described has become the official policy of the State of New York. New York has spelled out in a set of legislative acts how a statewide branch banking system will emerge by 1976. By the gradual removal of districts, by the granting of additional powers to sanction, to acquire branches and the holding company route, which is the route many banks are taking in New York, or whether it's the actual de novo branching, the first being apparently preferred, New York will by 1976 have what some people have called popularly wall-to-wall banking with a group of large banks, some based in Buffalo, some in Syracuse, some in Rochester, but the majority in New York City—some in Albany, incidentally.

So that the policy which I—if we're going to have statewide branch banking, in fact, it [986] would, in my opinion, be wise to have a number of—five or six such banks, and that their headquarters be scattered around the State.

THE COURT: The headquarter sites you mention would be what, Hartford, New Haven, Bridgeport—

THE WITNESS: Bridgeport—

THE COURT: —Stamford—

THE WITNESS: —Stamford and Waterbury.

THE COURT: —and Waterbury?

THE WITNESS: Those are the likely ones which would be preserved, for example, were this merger to be permitted.

THE COURT: All right, I have to give the court reporter a rest, anyway; maybe this might be just a convenient time, and we will pick up.

I hope you do not mind these interruptions.

MR. REYCRAFT: No, your Honor. The witnesses are here for the Court.

THE COURT: Thank you.

We will take about five minutes.

(Recess)

THE COURT: One short matter.

You may take the stand, Professor Stokes.

On the Master's report, have you taken a [987] position?

MR. REYCRAFT: Oh, yes, sir.

Mr. Stone and Mr. Bell, on the application for allowance.

MR. STONE: On behalf of CNB, your Honor, we have no objection to the application for the compensation.

THE COURT: All right.

MR. STONE: I believe Mr. Bell has the same position to take as far as the First New Haven is concerned.

THE COURT: All right, perhaps I ought to ask him.

Are you involved in this in any way, Mr. Reycraft?

MR. REYCRAFT: Mr. Bell and Mr. Stone are counsel for the respective banks, and their position is the banks' position. I have no objection.

THE COURT: The Government has no stake in this?

MR. CLARK: No, your Honor. In fact, I have not seen the motion. I do not think that there is any request for any compensation from the Government; [988] is there?

THE COURT: No.

MR. CLARK: We have none.

THE COURT: Mr. Bell, we are talking about the Master's report, and I am looking to counsel as to how I should handle that with respect to compensation.

MR. BELL: We have looked at it from the First New Haven point of view and there is no objection from our point of view, and I think that is true of CNB.

So the two banks, two defendant banks, are perfectly agreeable to accepting or indicating their consent to the motion that is before the Court.

THE COURT: All right.

MR. REYCRAFT: So there is no objection from me.

THE COURT: The Court has looked over the motion, and, in view of the position taken by the two banks that have the stake in the matter of compensation, finds that the requests are reasonable and fair.

I think the record should note that the Court is deeply appreciative of the work done by the two [989] Masters.

In addition to the amount of time and effort they put into their assignments, the Court does take note that the did this during a period of time that ordinarily, I assume, they would have been on vacation, and I am sure they had to suffer some inconvenience, and their families suffered also, I assume, along those lines.

I also would like to commend the attorneys for the obvious cooperation they gave the Masters I appointed. Some of the attorneys are here, many of them are not, but the Court is deeply appreciative of the fine spirit shown and the cooperation shown among all the parties to the assignments I gave the Special Masters.

I therefore approve the motions filed by the two Special Masters with respect to the requests for compensation.

You may proceed, Mr. Reycraft.

BY MR. REYCRAFT:

Q Dr. Stokes, let me direct your attention to Exhibit D-4.

What does Exhibit D-4 indicate to you, Dr. Stokes, with respect to the effect on the choices available to Connecticut banking consumers during the period from 1955 to [990] 1971?

A Mr. Reycraft, this report I have in front of me shows the number of banking alternatives—that is to say the number of actual offices of both commercial and savings banks—available in each of the towns, together with the change over the period from 1955 to 1971.

What it shows, for example, is that for Fairfield County there was in fact over this period of some sixteen years an increase of 23—a net increase—I'm sorry—a net increase of 20 alternatives of banking offices; in New Haven County some 23. That's a gross increase. If I subtract the changes over-all in 27, there was an increase in 23, no change in three towns—this is towns, incidentally—and decrease in one town; and, in the case of all the rest of Connecticut over-all, in the 169 towns, 107 of them show increases in bank offices, 60 no change, only two showed a decline in the offices.

Q Dr. Stokes, if you assume that the number of banks in the State declined during that same period of time,

what conclusion can you reach with respect to the effect of that decline in the number of banks on the state of competition among banks within the State?

A It certainly did not increase the number of alternatives available to the banking consumers. In fact, [991] they increased throughout the State. And thus one would have to conclude the competition did in effect increase.

Q I think the first part of your answer you may have misstated.

THE COURT: Read the answer.

(The answer was read by the reporter as above recorded.)

BY MR. REYCRAFT:

Q The decline in the number of banks—

A The decline in the actual number of banking corporations was offset by the increase in the number of offices.

Q Will you direct your attention to D-60, which is the Special Master's report.

What does that report indicate to you with respect to the state of competition in Connecticut?

A May I make just a remark about my last answer?

Q Yes.

A John M. Blair, who was for many years an economist with the various antitrust activities in Washington, pointed out that one of the better measures of competition was to examine the number of alternatives available to consumers, and so he would argue, as he does in a very trenchant, recent work, that one should count not just the number of emerging [992] corporations but the actual number of offices.

And in that light I gave my answer.

With respect to D-60 I'm prepared to answer.

Q Yes. What does it indicate to you, Doctor?

A Well, D-60 shows me the—it is a—the Master's report. It shows me the amount of business, banking business, done in the State of Connecticut by three different groups of banks. In the case of the Hartford banks

it shows their non-Hartford business, particularly in New Haven and Fairfield Counties; it shows for the Boston banks their business, and it's broken down here by counties; and it shows the New York banks and their busines, but not by counties.

Q Can you draw any conclusion from that exhibit concerning the ability of Connecticut banks to price their services?

A Well, it is clear that if something like nearly $500,000,000 in deposits were in fact domiciled outside the State of Connecticut—that is, people who lived here maintained deposits at least of that amount—and we think this is an underestimate from looking at the Master's report—then it is clear that the banks in Connecticut were in competition with banks in New York and Boston and had to take into consideration what these banks were doing.

[993] Q Well, now—

THE COURT: Excuse me.

Where do you see that five hundred million?

THE WITNESS: Well, what I did was add up the figures. It's—as I recall—let me see if I—

THE COURT: Are you just talking about Boston?

THE WITNESS: I'm talking about New York and Boston.

THE COURT: New York and Boston?

THE WITNESS: If I take New York I get—on page 23, demand and time, I get 484,000,000, in terms of total dollars, and then, if I go to the Boston figures, which appear on page 16, I get another 37,000,000; and that certainly crests 500,000,000. Then I'm told in footnotes on page 23 that there are some of these figures that are only 50 percent accurate and that the estimates the Masters conclude are low.

BY MR. REYCRAFT:

Q By "50 percent accurate," that means not half right, but half the total, if I understand?

A Well, if it were only—that's what I would guess, half the total. That's what I interpret the half, 50 percent. There is probably another amount not here included.

[994] THE COURT: On page 16 you added titles one and two?

THE WITNESS: Titles one and two.

THE COURT: I am just curious. How do you analyze three and four with respect to competition in Connecticut?

THE WITNESS: Well, they're even more impressive. If you operate on a simple loan deposit ratio you come up with a curious answer: that, in fact, the Boston bank —you had, I think, $37,000,000—did, in fact, $60,000,000 in loan business.

THE COURT: Would you focus —

THE WITNESS: So they have a larger share of the loan business than they had of the deposit business.

THE COURT: Would you, based on your knowledge and experience and expertise, assume that those loans probably were with big businesses?

THE WITNESS: The normal assumption is that greater—that one travels greater distances for larger amounts of money, so I would guess that to be the case.

I happened to know it includes some loans of [995] mine, which were not large.

THE COURT: Maybe you should tell us something that we ought to know.

BY MR. REYCRAFT:

Q Would the higher lending limit be better?

A Not to me, no.

THE COURT: All right, go ahead, Mr. Reycraft.

Q Dr. Stokes, I realize that, as is obvious from the record, you did not prepare this report. But can you, from looking at the report, reach any conclusions concerning the average size of loans and deposits? I believe there is data in there concerning the number of accounts?

A Oh, yes.

I believe that in the case of the number of accounts, for example, if I look at the New York data, that there were approximately 22,000, almost 23,000, accounts. This —if I divide the twenty—say call it 25—into 500, I'm going to get around—what is it? My mathematics is not quite that fast. It's either 2,000—200,000. My judg-

ment would be, keeping in mind how these are distributed, that these include some large accounts, and, since I'm sure that this includes commuter-type accounts, perhaps a very large number of these are probably small accounts. I would guess that possibly a thousand of these were large accounts.

[996] Q But it is your general impression that these accounts cover the range—

A Yes.

Q —size range of banking business?

A Covers the entire range.

I know as the treasurer of a local organization, receiving checks from people who pay me, that a substantial number of these checks are drawn upon New York banks by people living in this area.

Q All right.

A I also—pardon me—I would add that I know that, for example, the large department stores here in Bridgeport—Gimbels, Bloomingdales in Stamford, Wallachs and others—handle their accounts entirely through the New York banks, so that if one paid an account due here, one would find that it was cleared through New York and that Gimbels maintains its account not here but in New York.

Q Dr. Stokes, assuming the accuracy of the data in D-60 and again referring to the various concentration ratios which have been discussed by witnesses here and included in the exhibits, does D-60 indicate any factor that might be taken into account in evaluating any claimed concentration ratios?

A If there are in fact some 500 or more million [997] dollars not included in the totals with which the assets—the concentration ratios were worked—were used, were worked out, an additional, shall we say, 10 percent on the average to the figures, then this clearly would influence the concentration ratios. It is as if we were to introduce into the structure a bank larger than all but the top three. This would clearly influence the concentration ratios that we know about.

Q That statement includes only the loans and deposits which are reported in the Special Masters' report?

A Yes.

This leads me, if I may, to a little bit of over—little bit of statement. I said earlier that I felt, in effect, that the best concentration ratio measure was that which had the minimum amount of disembodiment; that is to say actually gave you the entire bank to operate with. And, if you—and that would be one definition of an ideal concentration ratio, in defining the districts in which you were going to be measured.

Another measure, I said, was to go to the customer, himself, and find out where he kept his accounts; and, if I found in Connecticut that a very large number—a significant number—in this case apparently somewhere in the neighborhood of more than 25,000 people—had accounts outside, then the [998] universe—one of the universes to be used for measuring concentration ratios would be that universe containing all of the accounts held by residents of Connecticut, no matter where held.

Now we have some indication of that amount. Some 500,000,000 is missing by using the less precise measure, and, were we more precise, then we would have this measure of the actual universe within which then the concentration ratios would be measured; and I would think to that degree the concentration ratio measurements which we have are not revealing.

Q In addition to your answer, which I understand to be a comment on the quantitative impact on concentration ratios, in your judgment is there any qualitative impact?

A Yes.

Q What is it?

A There is no doubt that a bank—let me interpret qualitative to mean the power to act, the exercise of economic power, which has to do with rates to be charged, management of portfolios, location of activities, the range of services to be offered.

In every one of these cases Connecticut banks, particularly those directly impacted by New York or Boston companies, would certainly have to take that into consideration.

[999] Q Dr. Stokes, I believe that Exhibit D-60 indicates the names of the New York and Boston banks which are included?

A Yes, it does.

Q Can you tell me, based upon your—

A As well as Providence banks.

Q Can you tell me, based upon your knowledge of Connecticut banking, what you know about these banks, how they compare in size to Connecticut banks?

A Well, First National City is around 27 million—27 billion dollars. It is the second largest bank in the country.

Q What are the total deposits of all Connecticut banks?

A And the total deposits of all Connecticut banks would in the most recent year be around close to six billion.

The largest Connecticut bank would be, perhaps, if I relate it—about 1.2 billion at the moment; and Chase Manhattan, First National City—that's the wrong order, incidentally—Manufacturers Hanover, Chemical, Morgan Guaranty, Bankers, First National of Boston, are all larger, substantially larger, than any of the banks in—in Connecticut. Only when I reach National Shawmutt or State Street in Boston do I reach banks about the size of Hartford [1000] banks.

MR. REYCRAFT: I intend to go on now to savings bank line of commerce questions, your Honor.

Q Dr. Stokes, I began to ask you sometime ago questions concerning your background and experience with respect to efforts by savings banks to obtain additional powers in the State of Connecticut.

Could you tell me what your opinion is of the likelihood that savings banks in Connecticut will obtain additional powers from the Legislature in the foreseeable future?

A It seems to me likely that they will. I base this upon having chatted with legislative leaders, having chatted with banking people on both sides of this argument—and you will understand that my position is not a popular one among commercial banks—and I having sensed the opinion and, of course, being—beyond that I can only say that it seems quite likely to me that, should the bill be presented in the next Legislature—and it's likely to—it would likely pass.

Q The bill that you envision would contain what kinds of additional powers for savings banks?

A The most notable power would be that granting savings banks the right to use third-party transfer paper of [1001] some sort.

Q Would you tell us what third-party transfer paper is?

A This is in—not quite, but almost the right to have commercial checking accounts.

Q Is it similar to what we have referred to here as the "now account"?

A Yes, I would judge that what would emerge from this legislative—legislative hearings on the bill would be comparable.

I should point out that, of course, since Greater Springfield includes some Connecticut towns, Connecticut citizens all—that is, the Springfield SMSA, if you want to use that, includes the Town of Somers, and certainly impacts—

Q Which is in Connecticut?

A Pardon me?

Q Somers is in Connecticut?

A Somers is in Connecticut.

(Continuing) —and certainly influences Enfield— that already Connecticut citizens, as they read the Springfield papers, which they read regularly, are receiving the services—can obtain such accounts. And I am sure that will be pointed out in the Legislature.

[1002] THE COURT: Could you give me an example? We have had definitions of the "now account," but give me a concrete example of how it would work with someone like yourself if you wanted to take advantage of it.

THE WITNESS: Well, let me give you a little bit of history here.

The Consumers Savings Bank of Worcester had its lawyers look carefully at the language—anyone who has a bank—a savinks banks account will have noticed that on the back page of that book is a little provision—the language that you may use to withdraw—provided if you are not present, if you wanted your wife to, for example, withdraw from your account—you would fill out

this form and sign it. And it's an order form. You would order the bank to pay you or someone else you designate a sum certain in money, and you would use that.

Now, the Consumers Savings Bank asked the Massachusetts courts to declare that that was in fact language of negotiability, and, as I recall that—I'm not a lawyer, so I have to be careful about this—but as I recall there was a [1003] declaratory judgment, which meant that it could not be challenged, and thus the language was converted into or was allowed to be language of negotiability.

Now, all that was required then was to take this language out of the bankbook, so to speak, and put it on a piece of paper, and now what it is is, in effect, an order. And the way it typically reads is, for example, "The Consumers Savings Bank of Worcester"—would—you would —you as the holder of the account would write, "I order the bank to pay."

Now, if you examine carefully, you discover that you are not ordering Consumers Savings Bank to pay but you are ordering, in fact, Worcester County National to pay, because that's where the account is actually maintained.

So, when I say almost like a check, in effect what the procedure represents is a combining of a savings account in a savings bank and a commercial account of the entire bank in a commercial bank. But the effect from the point of view of the consumer is as if he had a check. All he has to do is write out the check and pay any bill that he wishes, and he can draw it.

[1004] THE COURT: Telephone company?

THE WITNESS: Telephone company.

THE COURT: That type of household bill?

THE WITNESS: He can pay all of his household bills with a—what appears to him to be a checking account at his local savings bank, and those are now available in almost all savings banks in Massachusetts and now in New Hampshire.

THE COURT: And the company who receives, the payee, can deposit that into his commercial bank?

THE WITNESS: Yes.

THE COURT: And it is processed just like—

THE WITNESS: It will go through all of the channels, the clearing channels, which any other check passes. It is, in fact, for all intents and purposes, a check, though it is not quite a check.

THE COURT: Do the Connecticut savings banks have this provision on the back of their bankbooks, or is this something—

THE WITNESS: There is such language. I do not know that any finding has been made that that language is language of negotiability. I [1005] think it's been determined in New York that it is not. You are probably—

THE COURT: Let me ask you the question this way: It is probably somewhere here in the transcript, but this so-called NOW account—

THE WITNESS: Negotiable order of withdrawal.

THE COURT: Are there any Connecticut banks offering this service?

THE WITNESS No. However, in all—in absolutely—to be absolutely clear, there is a savings bank, the Savings Bank of Tolland, which through a quirk of its charter has had from the beginning the right to issue checks and does issue checks. I think it amounts to some 9 percent of its accounts.

THE COURT: But that is the only savings bank in Connecticut?

THE WITNESS: That is the only savings bank that in Connecticut does now issue checks. So that no bank, to my knowledge—in fact, I think I would know—does at this stage offer negotiable orders of withdrawal.

THE COURT: Go ahead, Mr. Reycraft.

[1006] BY MR. REYCRAFT:

Q Dr. Stokes, let me direct your attention to Exhibit D-19.

Do you have that?

A I don't have that.

Q Dr. Stokes, what was the purpose of D-19?

A D-19 simply summarizes for Connecticut the columns from this report, assets and liabilities, commercial and mutual savings banks, 19—December 19—31st, 1971;

and it—it has as its source these three—the Federal Deposit Insurance Corporation and the like.

Now, what this does, it takes from this official report of these three agencies, which is a joint report—it compares the operating income, or the operating statement—earning statements of two types of banks of Connecticut, commercial banks, for the year 1971, as of December '71, and mutual savings banks.

Q Does it indicate any degree of comparability between mutual savings banks—

A Yes, it indicates a surprising degree of comparability: essentially similar levels of operating income, levels of earnings, loans, security income, service charges. Here there is a significant difference. Investment yields are held in some textbooks to be widely different, but they're [1007] not so terribly different upon observation here. And operating income as a percentage of capital are not in fact noticeably different, despite some literature to the contrary.

Q Dr. Stokes, will you refer to Exhibit D-20.

A Pardon me—may I make just one additional remark?

Q Yes, indeed.

A This describes Connecticut. It does not—this is not—the Connecticut savings bank situation is a unique situation and must not be compared, say, with Pennsylvania or with other states. Connecticut banks have certain powers.

Q Why is that, Dr. Stokes?

A Well, for example, they've been granted certain personal loan powers that are not present elsewhere.

Q For example, in the State of Pennsylvania?

A Yes, for example, the State of Pennsylvania.

Q Does Exhibit D-20 tell us anything about this?

A Exhibit D-20, I'm afraid—you have a copy of it. I do not.

(Document handed to the witness.)

A (Continuing) Thank you.

D-20 looks at the portfolio—it is, in fact, an examination of the balance sheets of these two types of banks.

Here, once again, we notice surprising amount of similarity.

[1008] Investment securities, the totals in investment securities held, real estate loans, the mutual savings banks are by far larger, but the commercial banks are not insignificant in this market. Commercial and industrial loans, personal loans, including auto and installment loans, even loans to banks, the total portfolios—I don't argue they're exactly similar; I simply point out to you as you examine the portfolio you will notice, as between the two kinds of banks, there's a very interesting amount of similarity in their portfolio behavior.

Q Dr. Stokes, let me direct your attention to the line "Corporate Bonds."

A Yes?

Q Why, in your opinion, do no such investments show for insured commercial banks?

A I don't think—here again, I'm not sure. I don't think commercial banks can in fact invest in corporate—I'm not sure about this.

Q I think you are correct about that.

Why does it not show anything with respect to corporate stock?

A Once again I think that's true.

Q It does show a small amount of commercial and industrial loans under "Mutual savings banks."

[1009] Do you know what the nature of such loans is in general?

A Well, let me take two kinds of customers that you are likely to find using this sort of service.

First of all, a small businessman who has various routes by which he can obtain credit—and one of them is obtaining a mortgage on his existing property, and the purpose of the mortgage is to obtain business funds—he can also make some personal loans for business purposes. Now, what the banks do is to classify the loans according to purpose, so that the probable collateral in back of mutual savings bank loans was in many cases real estate, although not all cases; sometimes it is simply personal credit. It was, in fact—the purpose of the loans was

a commercial—was not for real estate purposes but commercial purposes.

Q Dr. Stokes, the exhibit indicates, does it not, that the total investment portfolio of mutual savings banks in the State of Connecticut exceeds that of all insured commercial banks in the State of Connecticut by over a billion dollars?

A That's correct, it does.

Q Dr. Stokes, I just have one final question to ask you, and that is referring to your earlier testimony in response to the Court's questions about the possibility that [1010] five or six statewide banking systems might emerge.

I did not understand you to mean by that that there would be only five or six banks left in the State of Connecticut?

A No, I did not mean that.

Q Would you can to say what you did mean? What does that imply with respect to the continued existence of smaller banks?

A I did not, incidentally, spell out the smaller bank situation.

One of the interesting trends, which I did not anticipate, was the rapid growth of small banks even here in this area. I know of two that have been created since this scenario worked out by me initially, Lafayette and Bank of Stratford, and I know of another waiting in the wings, waiting for approval to enter Bridgeport. I know of—I could think of five others also waiting in the wings. I can begin to name six or seven others created in this period. So there has in—been a rather large and interesting increase in the number of small banks. I would expect that to continue. Apparently it has become clear to investors that the banking business in Connecticut offered even to the small investor an opportunity for good returns.

Q Based upon your knowledge of these newly chartered [1011] banks since you came up with this scenario, how have you observed that they are doing, both from the standpoint of attracting banking business and from the standpoint of their investors?

A Let me say that in the case of the Bank of Stratford I was an advisor to the bank from early on, and I spelled out for them in part what I thought they ought to do in order to succeed; and, while they haven't followed me precisely, they've done fairly well, and their growth has been both rapid in terms of demand deposits —they began, incidentally, late in the spring of '71, and now, in the fall of '72, they're at 11, almost 12 million dollars. They have built rapidly both time and savings and demand deposits, and have appealed to a range of customers within the Town of Stratford and the adjacent Town of Milford, City of Milford, and even in Bridgeport. Generally these are medium-size accounts and medium-size business people.

Q For those persons who prefer to deal with a relatively small bank, for whatever reason?

A Yes.

Q What have you observed to be the range of choices available to them over the past ten years?

A That set of choices has increased.

MR. REYCRAFT: I have no further questions.

[1012] THE COURT: Cross-examination—I am sorry. Mr. McEnerney?

MR. McENERNEY: Nothing, your Honor.

THE COURT: Mr. Bell?

MR. BELL: Nothing.

THE COURT: Mr. Stone?

(No response)

[1013] THE COURT: The thought comes to mind, I might shoot it out to you at this point, you talked about concentration ratios. Is that a pretty good test to be considered in mergers from your point of view?

THE WITNESS: I would say, yes, provided one adequately defined the market.

THE COURT: And in this merger, what would your opinion be as to the market?

THE WITNESS: I would say that there were two alternatives that would meet my rule of minimum disembodiment, one would be the district which is, in effect, the service area, and to an increasing sense the State,

and in the state we would get almost—we would pick up all the complete bank in the marketplace and not just some shadow of it, we would, of course, not be able to pick up the New York and outside influences this way, but I'm afraid that's a risk we have to proceed.

THE COURT: Proceed.

CROSS EXAMINATION

MR. BENTKOVER:

Q Doctor Stokes, you said you did consider the state as a market?

A I would certainly offer it as one of the best market [1014] to be considered for this purpose.

Q And what are the market shares of the defendant banks within the State?

A Within the State at this stage?

Q Year end, '71, if you have it?

A Yes. I really don't have it.

THE COURT: Do you have it?

MR. BENTKOVER: Yes, your Honor.

A If I check my records, I can find it. It's a matter of official record.

Q Our Exhibit P-70 indicates that Connecticut National Bank held 6.6% of State deposits and that First New Haven National Bank held 4.7 for a total of 11.3, which I believe is consistent with your exhibit, isn't it?

A Yes. Yes, I would say so.

Q And if the State is a market, competition between those two banks would be eliminated to that extent, wouldn't it?

A Yes, it would be.

Q And you would conclude that this merger would eliminate competition in the State of Connecticut?

A It would have the effect both of decreasing some competition and increasing other kinds of competition.

Q Using concentration ratios, though, you would conclude [1015] there would be a decrease in competition?

A Using the State as a market and using concentration I so described, yes, the concentration ratios.

Q Would you turn to Exhibit 20, which I think was the last exhibit you discussed?

A All right. I have it in front of me.

Q And the source of that, I believe, is assets and liabilities of commercial and mutual savings banks?

A Yes.

Q I see you have it, good. We have already introduced that in Exhibit 118, P-118.

Would you turn to the page on assets of commercial banks? I believe it is Page 42.

A All right.

Q I'd suggest you use what's already in evidence, Exhibit P-118, which you can verify against what you have to be sure.

A All right.

Q And does P-118 represent the source—

A It does.

Q —of D-20? Would you look at the first item on Page 42 of P-118, which is cash reserves, balances?

A All right.

Q What is the total for commercial banks?

[1016] A 842,397,000.

Q And about what percent is that of total commercial bank assets?

A That would appear to be about one-eighth of it, wouldn't it?

Q That would be 12 or 13%.

A 12 or 13%.

Q Would you now turn to Page 102, which gives the same item for mutual savings banks?

And what is the amount held by mutual savings banks?

A 91,531,000.

Q Which would represent about what percent?

A It's nine—I'm not good at—right offhand, at percentages, it's 91 million out of 6.7 billion.

Q It's 91 million, isn't it?

A 91 million, 91.5 million, out of 6 billion, 724 million.

Q That would be perhaps one—one and a half percent?

A One part in 700, apparently. I'm sorry, one point —well, ninety—as I say—I'm used to using a computer.

Q Would you agree that commercial banks hold about

nine times the amount of cash reserves as compared to savings banks?

A In combined cash assets, yes.

[1017] Q Do you know the reason why commercial banks hold so much in cash reserves and—why commercial banks hold it and why mutual savings banks hold so little?

A Well, there are two reasons, aren't there? One is that they're required to by reserve requirements, the reserve requirements as they now exist treat savings banks differently than they treat commercial banks, secondly, because the commercial banks are involved in short-term liabilities in order to meet the checks they have to maintain for revolving purposes significant cash balances.

Q So that the nature of the commercial banking business requires large cash and reserves, whereas the nature of the mutual savings banks business does not require such large cash and reserve balances?

A With some reservation, I'd answer that, yes.

Q So at least looking at this item, would you agree that there is no comparability between the balance sheets of savings banks and commercial banks, as far as we have gone?

A Well, yes. But one should point out that if one were going to look at cash balances, one, in fact, should look at cash turnover, and I am interpreting, the correct way to look at this, I would argue, would be to look at the turnover of cash, the pattern by which cash flows through an organization—a bank, rather than just the balances, but, in effect, I would [1018] say the answers might well be the same.

Q And you would expect commercial banks to have a much higher cash turnover, wouldn't you, then?

A I would expect, certainly, the large commercial banks to have larger turnover.

Q So that if we took your suggested measure of cash turnover, the discrepancies between commercial banks and savings banks would be much greater than this exhibit indicates?

A Except that in some markets they might be much closer.

Q The first item on your Exhibit D-20 is investment securities. We have already noted, I believe, that commercial banks don't hold corporate stocks and bonds?

A That's correct.

Q And savings banks do hold about a billion dollars worth?

A Correct.

Q So they're not comparables in this respect, either, are they?

A No.

Q And the next—

A However—

Q Go on, please.

A —I should point out that the purchase of corporate bonds is a way by which you finance corporations, it is a—from the [1019] corporate point of view, stocks and bonds represent a source of cash.

Q That would be long-term cash, wouldn't it?

A Yes. But, really, the length is not determined by the time written on the security, but rather, by the length of time held by the holder of the security. So that corporate bonds and corporate stocks are, in fact, transferred with considerable frequency, the portfolios would change quite frequently, and moreover, borrowers would resort to different approaches, so that, in effect, looked at from the cash flow point of view, a corporation could either go to a commercial bank and obtain funds, or it could go by selling its liabilities called—its bonds or its equity position, called stock, and then obtain funds, so it has the choice between the two.

Q You are comparing commercial industrial loans by commercial banks to corporate stocks and bonds, is that correct?

A I'm looking at the—from the corporate point of view from the flow of funds which a corporation—the cash flow to which the corporation might turn.

Q Commercial and industrial loans are short-term loans, aren't they?

A Yes, but there is the practice of the normal renewal of such accounts, so that while a substantial proportion of the commercial industrial portfolio is called short-term,

it is, [1020] in fact, subject to such terms of renewal as to be almost long-term.

Q But a—

A It could be cut off at any moment, however.

Q Right, and so as advisor, I suppose you would not tell a corporation to finance long-term needs with short-term funds because of the possibility that it could be cut off?

A Yes, but I would also explain, as I would to my students, that one must not look at names, one must look at practice.

Q Right, and that's what we're looking at?

A Yes.

Q The practice end of it. And long-term bonds would be perhaps 20, 30, 40 years in duration, wouldn't they?

A The maturity dates are, in fact, that long.

Q And if a businessman wanted to finance inventories or receivables for a few months, perhaps six months, would that be a standard length of time?

A He should not normally use bonds and stocks.

Q Right, and he shouldn't normally use mortgages, either, for that length of time, either, should he?

A I might recommend stock under some conditions, I would not recommend bonds.

Q Would you advise that he mortgage his plant for 30 years in order to meet a six-month short-term cash need?

[1021] A Now you used the word "mortgage". Did you mean it in precisely that way?

Q I mean actually place a mortgage on his plant.

A Yes, I might.

Q In a typical case, would you, or would it be an exceptional circumstance?

A I would say that for a medium size operation, it would not be at all untypical. I would simply inquire as to what the likely pattern of payoff of that mortgage was. The fact that it was a mortgage and that it had a pro forma maturity of some 25 or 30 years would not be significant if I knew that in practice such mortgages were paid off in a much shorter term than that.

Q They're not paid off in six months, typically, though, are they?

A No. I sit on some board and I know they're paid off rather more sooner than most people suppose.

Q And would have been more expensive to finance such short-term means?

A Once again, one has to consider the position of the—of the borrower. While it is true that all borrowers, if given alternatives, would choose the cheaper source of credit. In fact, for many small businessmen, medium sized businessmen, there may be no alternatives but to resort to this form of credit.

[1022] Q So you mean, then, for a man who does not have a credit rating so he could go into a commercial bank and get a CI loan, he could then go to a savings bank and finance it in this way?

A Or he might, if he had such good practice with the savings bank that he knew could get it much quicker and he knew what the rules of the game really were.

Q Let's look at one more item on the catgory: investment securities-municipal bonds, you show one billion dollars for commercial banks and about 59 million for savings banks, that is not very comparable, either, is it?

A No. Both in municipals and in government bonds there have been—one has to see this whole pattern over the long pull, the Federal Reserve Bank of Boston has done some analysis of this, government bond portfolio, and what we have seen is a flight from governments by—and municipals by mutual savings bank more rapidly than the flight by commercial banks, but both of them have tended to flee from governments, but municipals in part reflect the generated business, in effect, a certain wholesaling operation going on here when you look at municipals from the point of view of a commercial bank.

Q Your next category is real estate loans, and what was your conclusion on that section?

A Simply that the mutual savings banks were specialists [1023] in this field, but once again, I should point out one has to look at individual markets and individual bank portfolios.

Q Would you turn now to Exhibit P-118, the source of the 20—Page 42?

A All right. I have it.

Q And it gives the loan portfolios of the commercial banks in Connecticut, and do you see where total loans by commercial banks run 3.7 billion?

A Total loans? All right. Yes.

Q And the next item is real estate loans, and that is 1 billion, 329 thousand?

A Yes.

Q 329 million, excuse me.

A All right.

Q Would you quickly work out what percent real estate loans represents the total loans by commercial banks?

A I'm afraid you have me, but let me say 13 out of 37.

Q It's a bit more than a third?

A A bit more than a third. I want to point out that—how Connecticut—why this is a significant ratio, if I turn to Page 75, look at the State of New York, and compare real estate loans of New York banks, the whole entire with the loan portfolio, I observe that there it is five in thirty, whereas in Connecticut it is 13 in 37, it is clear that the Connecticut [1024] banks make a specialty rather—more than New York banks in real estate loans, and when one examines their liabilities, one discovers why, that is to say they hold very large—in fact, larger balances in time and savings than they do in demand deposits.

Q Would you turn to Page 102 of Exhibit P-118?

And it gives the same information on total loans and real estate loans for savings banks?

A Yes.

Q Do you see that?

A It does.

Q And savings banks have about 5 billion in loans outstanding, and of that 4 billion, 759 million represents real estate loans, is that correct?

A That's correct. Let me see, what did we leave out?

Q That would represent about what percent? Would you say 95 looks—

A Certainly. Certainly a very large percentage.

Q Would you—would you agree that 95—I'd like you to work it out, if necessary.

THE COURT: Have you worked it out?

MR. BENTKOVER: I have 95, yes.

A I would accept 95 if you worked it out.

Q Okay. And, then, that would mean 5% would be represented by nonreal estate loans, correct?

[1025] A Yes.

Q Now, I think you concluded that 5% of the loans made by mutual savings banks are in nonreal estate areas, and that about a third or a little more of the loans made by commercial banks are in real estate, so that two-thirds must be in nonreal east areas, is that correct?

A Correct.

Q So that—

A But may I—

Q Sure, finish.

A —I was comparing total portfolio investments, plus loans, and it seems to me that that's a more complete picture than to look simply at loans.

Q I understand you were comparing that, which—and then you concluded that these two—two institutions were comparable?

A Yes.

Q But it appears that the reason that they're comparable, maybe that you have left out the things which aren't comparable and that's what I'd like to point out now.

A I chose to see it somewhat differently than you, but I think you are correct.

Q I can understand why you excluded this information, but let's talk about it.

A I thought to include more than you included.

[1026] Q But you would agree that in the area where commercial banks loan about two-thirds of their funds, mutual savings banks loan only 5%?

A In terms of loans, this is evident and true.

Q Okay. And that is not very comparable, either, is it?

A No.

Q And in those areas, mutual savings banks do not offer significant competition to commercial banks, given these figures?

A Well, I think—you know, in order to answer this fairly, and if I were dealing with a student who had asked me that question, I would point out that what we have done is to have lumped an awful lot of markets together, and that to speak of competition requires me to define the marketplace, so I would argue that there was a real estate market, I would argue that there was a commercial and industrial loan market, that there was a personal loan market, that there was an investment market, and, indeed, these markets might subsequently be broken down, we might examine each market rather than to sum them and say in each of these markets does—what is the position of the relevant potential suppliers of funds, no, I would quite readily agree that C&I loans, savings banks are not a major force, they are, however, an alternative, and to me the surprising thing this is—there's a surprisingly large alternative [1027] national personal loan area. And equally surprising, the real estate portfolios of commercial banks represent a very large alternative to mutual savings bank positions, that's position of commercial banks, so that looking at each of the potential sources of funds or the separate markets I found, and I think this is the way a banker would have to face it, that in those markets which are separable, for which there are separate officers, staff, he would have—he would find competition from a savings bank.

Q Did you put this exhibit together yourself, or was it—

A I put it together myself, from the pages you have referred to.

Q Your next item is personal loans, including auto installment, et cetera?

A Yes.

Q And your figure for mutual savings banks is 207 million?

A 207.4 million.

Q And that would come from which page of Exhibit P-118? Would you look at 102?

A I think it's 103, isn't it? 102? All right. Yes. It comes from Page 102 in the first column, where I see loans to individuals for personal expenditure.

Q Okay. 207 billion?

[1028] A 207 million.

Q Million. Now, you have insured commercial banks, 266 million, is that correct?

A That's right.

Q On your Exhibit D-20?

A That's right.

Q Now let's look at Page 42 of Exhibit P-118.

A All right.

Q And would you read Total for Other Loans to Individuals?

A Two forty-one zero eight.

Q Now you are—you are reading one row below the one I have asked you. Other Loans to Individuals.

A Oh, yes. 1,018,223,000.

Q And you don't show that on your table, do you?

A No, I don't.

Q You only have 266 million?

A What I did, actually, was to go down and eliminate single payment loans.

Q Because?

A And all other loans.

Q —is that because commercial—or rather, mutual savings banks don't offer those loans?

A What I was seeking, though, was to make—was to provide as comparable a figure as possible, I tried to figure [1029] what it was—this 207 million dollars was, or were, in these savings banks, and I went to the page and tried to add up to compose a similar figure, I did not take the entire other Loans to Individuals.

Q Right, so your argument on this table, then, is that looking at the statistics you have, mutual savings banks and commercial banks are comparable, and now you point out that in this item you have excluded all items which are not comparable, is that correct?

A I excluded some items, yes.

Q Well, let's see how much. The total, 1 billion, 18 million—

A Correct.

Q —and you have 266 million. Would you figure out how much you have excluded? I get 752 million.

A About 80%, I excluded the single payment loans, I excluded other installment loans, but what I sought to do here was to—you will notice that what I have said, I was comparing the—the subtitle is Auto Installment and et cetera, so I took automobile loans and I took the installment loans, and then I went to the personal portfolio and I asked the savings banks what they had in their portfolio, so I composed this figure, I didn't attempt here to include all other loans to individuals, I attempted to include only personal [1030] loans of the sort described.

Q Of the sort which mutuals savings banks make?

A Of the sort described, well, I was seeking to discover what the area of competition was.

Q Right. So that in the other area of 752 million dollars, which mutual savings banks don't make, you conclude mutual savings banks don't offer any competition?

A I would have to point out that in that market was one of the markets in which the competition was minimal.

THE COURT: Give me an example of this.

MR. BENTKOVER: Pardon?

THE COURT: Give me an example.

MR. BENTKOVER: Of what Doctor Stokes has excluded, you mean?

THE COURT: I know what he's excluded. I'm glad to have that pointed out, because I wasn't sure what the et cetera meant, the e-t-c-, but give me an example of what was excluded in concrete terms.

MR. BENTKOVER: Yes, your Honor. The largest single item is single payment loans for personal expenditure.

THE COURT: Now, what is that?

MR. BENTKOVER: Which is 409 million dollars.

THE COURT: Now, what is that in practice?

[1031] MR. BENTKOVER: Well, mutual savings banks can only loan on an installment basis. If a man wants to take out a loan with a payment at the end of one or two years in one lump sum, he has to go to a commercial bank for that.

THE COURT: Is that by law?

MR. BENTKOVER: Perhaps.

THE COURT: Well, I mean if you know.

MR. BENTKOVER: By law, I don't believe mutual savings banks can make such loans in the State of Connecticut.

THE COURT: Can you give me another example of what was excluded?

THE WITNESS: I think that's correct.

THE COURT: Just so I get this term, so if I wanted to borrow $5,000.00, and it is due and payable on a certain date, one lump, single payment due, I'd have to go to a commercial bank?

MR. BENTKOVER: Right.

THE COURT: But if I want that same $5,000.00, but I want to pay it monthly, I could go either place?

MR. BENTKOVER: No. You picked an interesting figure, 5,000 is the cut off point. At that dollar amount, mutual savings banks cannot make installment [1032] loans, you would have to go to a commercial bank.

THE COURT: Okay.

THE WITNESS: Above that amount they could not.

THE COURT: I remember hearing that before during this trial. Now, take the four—let's make out it was $4,000.00. If I wanted to pay it monthly, I could go to either bank, commercial or—

MR. BENTKOVER: Yes, you could.

THE COURT: Now, if I wanted $5500.00, I would have to go to a commercial bank?

THE WITNESS: Correct.

THE COURT: Now, what other categories have been left out?

MR. BENTKOVER: Another one is credit cards and related plans, which includes check credit, revolving credit and—such as Bankamericard.

THE COURT: What's the story on that?

MR. BENTKOVER: Savings banks do not engage in any of those activities, and as Exhibit P-118 shows, commercial banks hold approximately 94 million dollars worth of such loans.

THE WITNESS: I would only add in Connecticut they do not, in Massachusetts they do.

MR. BENTKOVER: Right. But we're talking about [1033] Connecticut.

THE COURT: Any other categories?

MR. BENTKOVER: Well, it appears that—an item for other retail consumer installment loans on mobile homes not including trailers was excluded, that's a relatively minor amount of 9 million dollars, residential repairing and modernization installment loans was excluded, 52 million dollars worth.

THE COURT: How does that compare? 52 million for which? For commercial banks?

MR. BENTKOVER: Yes.

THE COURT: And how about savings banks?

MR. BENTKOVER: I don't know why Doctor Stokes excluded that one.

THE COURT: Is that a close one?

THE WITNESS: That's available in both banks. Part of the reason is that the breakdown isn't exactly comparable as between two tables, so I had to go picking my way through it to see what was comparable.

THE COURT: All right. Go ahead. You may proceed.

THE WITNESS: May I comment—what we have pointed out is that in those areas which the savings banks have been prohibited by law from entry, they [1034] are not now competing, but in every area in which they can enter, they have chosen to compete significantly. And that they are seeking—you asked me what else they would—they were likely to seek.

MR. BENTKOVER: I did not ask you.

THE WITNESS: Your Honor.

MR. BENTKOVER: Okay.

THE WITNESS: It is more likely they would seek credit card powers as they have obtained in Massachusetts.

BY MR. BENTKOVER:

Q Let's look at some more items which aren't on D-20, but which we can find in P-118. Would you examine Page 42 of P-118?

A All right. I have it.

Q There's an item: Loans to Domestic Foreign Banks, and immediately beneath Loans to Other Financial Institutions, what is the total of that?

A Let me see, Loans to Domestic and Foreign Banks, is this the one you are listing, or corporations?

Q Yes, and the one immediately beneath it, Loans to Other Financial Institutions.

A 143—almost 144 million.

Q Now, would you look at the figure for savings banks [1035] and tell me what that amounts to?

A Loans to Domestic and Foreign, 6.2, Loans to Other Financial Institutions, 5.8. That's why I think I got the 13—no, I got six point—I didn't count the other.

Q And how many times would you say commercial banks loans compared to savings banks in that area?

A Significantly larger. I was, in fact, surprised to find the savings banks were making these loans at all.

Q And you excluded that item from your table of comparisons, didn't you?

A No, I was looking simply at banks.

Q And mutual savings banks?

A When I said: loans to banks, I did not include other financial institutions, and you have caused me to add other financial institutions to banks, and so I was simply taking the line read leading loans to domestic commercial banks—

Q Now I think I understand.

A I went to the one in savings banks and took the loans to banks and put those two—and those two, in fact, are the figures I have on Page 102 and 42.

Q Well, loans to other financial institutions, do you have that?

A Yes.

Q Where is that?

[1036] A You mean on Page 42?

Q On your Exhibit D-20.

A It's not there.

Q Right. You have excluded that? Which shows substantial differences, doesn't it?

A But I want to make it clear that what I'm comparing is two—the figure in both of these schedules is—the heading is Loans to Domestic and Commercial and Foreign Banks, now, that same heading appears in both schedules, and I simply reported the figures that appear in those two schedules, I did not add in other financial institutions, had I done so, the figure for savings banks would have been larger, and admittedly, the figures for commercial banks would have been much, much larger.

Q Right.

A I added it, actually, more as a matter of surprise to myself to discover that, in fact, savings banks did make loans to commercial banks, I didn't realize they were in the business.

Q Would you refer back to P-118, Page 42? You will also find loans to borrowers and dealers in securities and other loans for purchasing and carrying securities, and what does that total?

A That total is 24 million—is it? Almost 25 million? [1037] Q Yes. And the next item?

A And the next item beyond it is 8.2 million.

Q So that would be about 33 million dollars for loans for purchasing and carrying securities?

A Right. You wouldn't argue the savings banks ought to make such loans.

Q Well, let's turn to the page—Page 102.

A Pardon me?

Q Let's turn to the page and see what the total is?

A But I think it is a matter—here I think you would find that, in fact, you wouldn't—you could certainly obtain a mortgage and move into the market.

THE COURT: Maybe we would move a little quicker if the witness would just answer your question, and the question pending is: would you kindly turn to Page 102?

THE WITNESS: On Page 102—figure on that item is zero.

Q You have answered my next question, and you say: zero?

A Zero.

Q And you have excluded that, also, from your Exhibit D-20?

A Yes, I did that deliberately.

Q I understand you did it deliberately, and that's the [1038] point I'm making.

THE COURT: And how about commercial banks, do they have all of that 33 million?

MR. BENTKOVER: Yes.

THE COURT: Is this a convenient time for lunch?

MR. BENTKOVER: It is, your Honor.

THE COURT: All right.

(Recess taken for lunch at 1:00 p.m.)

[1039] AFTERNOON SESSION

THE COURT: Are the parties ready to proceed?

MR. BENTKOVER: Yes, sir.

CHARLES STOKES, resumed and testified further as follows:

CROSS EXAMINATION CONTINUED

BY MR. BENTKOVER:

Q Doctor Stokes, you believe you said that you had developed part of your knowledge and background on banking in Connecticut from working in banks—

A That—

Q —and consulting with them?

A That's right.

Q Have you worked for any of the ten largest banks in the State?

A I have, yes.

Q Which banks?

A I have been an advisor or a consultant to—you want me to exclude, would you not, this current instance, would you?

Q If you have worked for these banks before this time?

A Yes.

Q Please—

A I have, I have been an advisor or consultant to the [1040] City National, State National, Connecticut National. I think I'm correct in—those, certainly, in recent years, and I can't recall any others.

At the moment I won't say there weren't any others, I can't recall any other.

Q What are the sort of things that you consult with these banks on?

A Well, for example, one item might be management training, in the case of Connecticut National I conducted a program to train branch managers, or I might have, in the case of another bank, in the case of State National, it was in the development of a particular department.

In still another bank it dealt with a merger, proposed merger, in fact, a number of proposed merger discussions. On other occasions it dealt with a specific branch or with typically management policies.

Q Is your work with these large banks done through the University on a nonprofit basis?

A No, I am a consultant. It is on a non—let me say that I am practicing as a consulting economist, and, though, I am at the University, the tie is not directly with the University.

Q Are you a member of the board of directors of any bank in the State?

[1041] A I am not at the moment a member of the board of directors of any bank in the State; I am a member, however, of the board of directors of a savings and loan association.

Q Have you been a member of any board of any of the commercial banks in the State?

A No, I have not.

Q I think this morning you discussed the sort of things a bank looks for when it decides to set up a branch, and correct me if I'm wrong, but I think you indicated that business in an area is one thing which a bank considers?

A Yes.

Q What was your point on that subject?

A Well, I was trying at that stage to establish, for example, that the potential that existed in a proposed de

novo branching area had to be considered in terms of what the total accounts might be from any kind of potential customer, and I—this is an effect of market study, so I looked—I would have to look—anyone in this position would have to look at all potential sources of business, on the liability side, which is the one stressed and on the asset side, as well.

Q And one of the items you looked at was the amount of business which the bank already held in that area, is that correct?

A Yes, to the extent that that was knowable, yes.

[1042] Q And in addition, would you also want to look at the amount of business which the bank might potentially obtain in that area?

A Yes.

Q And what sort of things do you look at in order to reach that decision?

A Well, this is a—I might say a very fascinating question, because it turns out that I have in my bag a document which has been prepared for one of the large regulatory agencies in Washintgon analyzing this very question, I have been asked to comment on it, to indicate what my opinions might be. It is some feeling that our current procedures are not complete enough, and its being prepared for bankers.

The whole question really has to do with: is it possible to establish that a viable banking office, given the market, given the existing and potential competition, could get started and survive.

Q Would you be interested in looking at the amount of business which presently exists in the area?

A Yes.

Q And what things would you look at?

A Well, I would—when you say "business," do you mean banking business?

Q Yes, or what it indicates that there might be [1043] significant banking business, I don't know how you as an expert would phrase this.

A Well, in the working sheets you would use, for example, personal income to try to generate some picture of the savings potential and the demand deposit potential,

you would use retail sales, you might even use the distribution of those income data, that is to say: by census tract or even by block if the figures are, in fact, available, you would look at house values and how they have changed, you would look at the—at the employment, the payroll, the amount of the employment and actually what the payrolls were at leading plants.

You would look at the commuting pattern, where do people go? You would look at the distribution, the activity of major shopping centers, what's happening in these areas. You would, in fact, take every indicator of economic activity along with whatever the current banking community savings, savings and loan and commercial banks have already been able to establish there.

Q And in addition to looking at the present state of each of these items, would you also want to make some prediction of how they'll do in the future?

A Yes. We would have, in fact, to project forward, income, for example, what was the likely pattern of income change and income distribution, retail sales, employment, and typically it's required that you do it over a five-year [1044] period, and so that you then have a basis for producing five years of pro forma balance sheets and pro forma income statements.

Q Would population be of any importance to you?

A Population is certainly an important factor, yes.

Q And expected population growth?

A Yes. Certainly, and the characteristics of the population.

Q What are the sources which you would use in order to obtain that data?

A You are now referring specifically to population, or to all of it?

Q Yes.

A In the case of population, the 1970 census, together with—and this is detailed as detailed—down to the individual block, by number, we know the population, we then compare that with the '70 census and we look at all other indicators of population change.

Admittedly, for small areas, it's—it's a bit hard to project, but by town one then takes into account birth rate

figures where they're known, in migration, out migration, and I should add, of course, as you are doubtless aware, that the Census Bureau publishes on a regularly publishing schedule a whole series of bulletins enable you to make such [1045] comparisons, rates of mobility and birth rates and the like by state, and incidentally, one other thing which we did not try to mention—I'll try to anticipate your question—is the labor picture because the department of labor of each state is required each month to supply an unemployment figure, and in order for there to be an unemployment figure, there must be a population estimate for the community, but unemployment is defined as—after all the population through the participation rate gives you the labor force, and employment is a percentage of that labor force, then gives you total employment, plus, as a derivative, the unemployment.

Q You indicated that the Census Bureau does give you detailed information on present population, when looking for projections of expected or future population, would you use Department of Commerce figures? They do project, don't they?

A Yes, I would. I would use state—

Q Which state figures are you thinking of, the Office of State Planning in Hartford?

A That office, of course, simply assembles the population forecasts which are done by the regional planning agency, regional planning agencies have, as a part of their requirement under Section 710, 711 grants, have extended forecasts on what are called base line forecasts, so they are [1046] the basic sources from which you always get those figures.

Q Is there a regional planning agency for Bridgeport and New Haven?

A Yes.

Q And each of those agencies does produce population projections?

A It does, it—at infrequent periods, but it does.

Q And you would use those in deciding on the potential for an area?

A I would use those. Now, there's one other source, the state health department in its monthly bulletin lists all morbidity and birth statistics and comes up with a forecast by town.

Q You mentioned that you would look at house values?

A Yes.

Q Of what relevance is that?

A Well, house values are one of the best proxies often for income, and it is also a good indicator of the likely market for—in the real estate business. Gives you some idea what the average mortgage amount might be.

Q And you would also look at personal income?

A Very much so.

Q And would high personal income, then, indicate a greater demand for banking services and a greater potential than [1047] lower personal income?

A Other things being equal, the answer to that would be: yes. I would be quite cautions to point out that in Fairfield County the closer one approaches the New York line, the less one would want to lean heavily on high income.

Q What is the reason for that?

A Because it's very likely that much of your market is in New York, the higher your income, the more likely these people are to be commuting into New York.

Q You did indicate that you look at commuting patterns, also?

A Very much so.

Q Of what importance is a commuting pattern when deciding where to place a branch?

A Well, suppose, for example, that I knew that by careful examination in the Town of Newtown the people normally went to Bridgeport, and I were a bank in Waterbury, I would have some difficulty breaking into the pattern, even though Newtown is much closer to Waterbury than to Bridgeport, because commuter pattern takes people south along 25 into Bridgeport, rather than north into Waterbury, so proximity to another market might be less important than the commuting pattern of the particular town.

Q I suppose it might be convenient for a person to [1048] bank where he lives?

A There isn't the slightest doubt about that.

Q And would you also say it may be convenient for a person to bank where they work?

A Yes.

Q And might it also be convenient for them to bank on the way between home and work?

A Yes.

Q Are there any other likely places you would look for convenient alternatives for a person?

A You mentioned work and you mentioned commuting, but you didn't mention shopping. So, obviously, it would be where they shop. In fact, wherever they congregate for recreation, for shopping, to commute and the like.

Q So that a person living in a metropolitan area might have alternatives throughout that area, depending on his life style, commuting habits, shopping habits?

A That's an important point. I would stress the phrase: depending upon commuting patterns, it would be quite important to know, just to know, for example, that a person in Monroe might have available to him in the Town of Stratford a branch, but his commuting pattern normally took him down 25, Main Street into Bridgeport would make the—not really convenient to him, he would almost rarely go there, even [1049] though it existed in the SMSA, so a bank would have to consider what were, in fact, the spokes of the wheel, and along those spokes are—the traffic moves.

Q Now, you mentioned SMSA. Is it true that the SMSA is, in fact, built up by looking at the commuting patterns of people?

A Yes, it is.

Q And do you recall that yesterday you discussed several other governmental areas for housing, labor, planning, are any of those based upon the commuting patterns directly?

A Yes. The urbanized area, is, for example. So is the retail trade area.

Q Is that the—

A And, in fact, so is the federal—what is the housing market area, and by and large, I should add that in most cases, except in New England, these are completely overlapping areas.

Q Now, those areas, as I understand it, take some input in from commuting, from there are also many other things that are considered in establishing the areas?

A That would also be true, incidentally, of SMSA's.

Q Which only takes into account population and commuting, I believe?

A Well, if you had only commuting, you would—you [1050] would have difficulty in New England, because, you see, the rule says: begin at the central city and keep counting through towns until you reach the limit following commuting patterns, but ending at a predefined SMSA, so, suppose it turns out that West Haven had a very significant commuting into Stratford, it would be left in the Hartford—in the New Haven SMSA.

Q So you are saying that the fringe areas around SMSA's are perhaps somewhat difficult to place properly, whether it is in one SMSA or another?

A It is decidedly, some say, a Bos-Wash problem, or a problem from Boston to Washington, the megalopolis, where do you draw those lines?

Q You mentioned an area called the SEA?

A The state economic area.

Q And was there also an urban area?

A Urbanized area.

Q And there was one for the Hartford area?

A There is an urbanized area for Hartford.

Q New Haven?

A There is for New Haven, there are urbanized areas for all built-up centers in the country.

Q And that would include the SMSA's in Connecticut?

A To be precise about that, all the SMSA's are, in fact, [1051] also included in some degree in the UA, but much of the UA might not actually be in the current SMSA or vice versa.

Q So there might be a difference of a town or two, one way or another, when comparing them?

A Let's take Bridgeport. As I recall the SMSA, total population for Bridgeport was some 890,000, but the UA population is around 440,000, as I recall. And take Hartford, the Hartford SMSA population, as I recall it, is around 659,000, but the UA population is 470,000.

So under the UA measurement, Bridgeport, Hartford turn out to be rather comparable, but under the SMSA definition they turn out to be quite different.

Q But none of those definitions include two or more SMSA's, do they?

A No, by definition, once the law—in fact, it's a rule of the office of Management and Budget—once you have defined a line, you don't cross it, some would argue that that's a mistake, but that's the way the rule goes.

Q You mentioned a few minutes ago in discussing where a bank might place a branch, you brought up the subject of shopping centers?

A Yes.

Q Of what significance is that?

A Simply because these are where people congregate, where [1052] there is trade and one should add that to an increasing degree banking has become a retail business.

Q So is it true that many banking offices today are established in shopping centers?

A Yes. I approach this with hesitation, because you are doubtless aware that there is a legal matter, there is a ruling from your Department whether or not—as to the legality of what's been the practice in the developing of shopping centers and banking connections.

Q You are talking about practices?

A Yes.

Q Restrictive leasing?

A I want to approach that with some care so as not to prejudice anything I have said before.

Q Good. In looking for a potential area to establish a new banking office, you might want to consider where a new shopping center is being developed?

A Subject to all of the law involved, yes.

Q So the way you are qualifying this, I gather you are saying that you got to consider a large number of factors?

A Yes, precisely.

Q To get the total picture?

A This is, in fact, required under the procedures that are—whereas the law might say to establish a branch these [1053] are the requirements, in fact, administrative procedures require you to back that up with quite a bit of information.

Q So you, in fact, would not pin down on one particular item and say this is—will be the item upon which I decide whether or not to place a branch?

A There is one. Is it going to be profitable?

Q And that depends upon a great variety of things?

A Depends, really, upon the projection of two items, the deposits and the portfolio.

Q And I think you also mentioned at the beginning that the amount of business a bank holds in an areas is of some importance?

A It is.

Q Why is that?

A Well, presumably if you are already there, then you can take advantage of the contacts you have. Incidentally, the form requires you to state whether or not the business that you have in this district which you propose to enter will be added to your current business or will be handled from your existing offices—pardon me—will be added to the new business, whether you will take the current business and build on it or will you, in fact, assign to the branch only the business that will be generated after that date.

Q Is it known as defensive branching when a bank does put [1054] a branch in to retain business which it already holds?

A Yes, it is.

Q Is that a common practice?

A It does take place, I couldn't say as to how frequently it takes place, but it certainly does take place.

Q Then, there are many other reasons for establishing a branch other than the fact that you have business in an area?

A Even if you were to establish a defensive branch, you would still have to establish to the regulatory commission that, in fact, you had a chance of success, you would have to meet essentially the same criteria.

Q And what would a banker want to know, what more there is in an area besides amount of business he presently holds?

A Well, it is entirely possible that a banker might have and, indeed, probably should have a long-range plan as to where he wants to be vis-a-vis his competition, vis-a-vis the potential market available to him, and so that subject to not very severe losses from this investment, he could, in fact, choose to set branches up where the potential was not as great as the—momentarily as it might be in the future.

Q In the last decade would you say there have been, oh, a few hundred new banking offices established in Connecticut?

A I think the number—there's a precise number. [1055] Certainly, the number is significant and large. I don't recall the exact number.

Q And did you testify this morning that you were unaware of any applications for new branches which did not show fairly substantial amount of business already held in an area?

A I don't think I said that.

Q Well, then, perhaps you could clarify that and tell me what it is you meant to say, if you didn't say that?

A I won't say that I didn't say it, I just do not recall having said it, I don't think I should have said it.

I, incidentally, don't see all the branch applications, but for those I have seen, almost all of them take into account, all of them, to my knowledge, have taken into account some pre-existing business, although it might not be in some cases very large.

Q So you did not mean to say, then, that a bank will not move into an area unless it has a large amount of business?

A Oh, yes, I didn't mean to say that.

Q And maybe, in fact, it may be attracted to the area by the growth it sees in the area?

A Yes. Yes, by the potential that exists there.

Q Do you have Exhibit D-4, Doctor?

A D-4? I don't believe I do. Yes, I do, here it is.

Q And this was the exhibit in which you examined the [1056] trends in banking alternatives in various towns in Connecticut?

A In which I responded—I didn't prepare this.

Q You didn't prepare it?

A I didn't prepare this. And have not really seen it in any detail before it was handed to me.

Q Well, when did you receive it?

A I think I may have seen it in passing sometime along in the last couple of weeks, but in terms of any study of it, I think this occurred today.

Q And D-4 breaks Connecticut down into separate towns, doesn't it?

A 169 towns.

Q Is it your opinion that there are 169 banking markets in the State of Connecticut?

A No, there are not 169 bank—there would certainly not—I'm using the word "market", to be precise, as we discussed, there's a variety—on which one can decide a market. If you mean are there 169 separate markets in which branch—de novo branching might take place, in answer to that, I would say: no, but somewhere near that possibility with some exceptions.

If you meant, is the market to be defined as the territory of an entire bank, certainly, there are far fewer [1057] than 169. I say that partly because there's some confusion in the regulatory discussion of this question, what do we mean by market, and the word "market" in this instance, I take it to mean market or branches.

In that case, 169 is too large, but some figure less than it is—in distance of it is probably correct.

Q You testified that you believe the entire State is a market, is that correct?

A Let me qualify—I might even say there are many more than 169 different markets, since there are, in fact, neighborhoods in cities, which in—

Q You are talking about a banking office's service area, aren't you, as opposed to a market?

A It's why I want to make sure I'm clarifying, the word "market"—you were asking me before about de novo branching basically, in that context a market is

any area in which there existed the possibility of a success of a branch—169 towns—in those towns there'd be many neighborhoods, so if I counted all the places where branches might be established and have been, then this is much larger than 169, but if you meant by market some such concept as SMSA tries to get at, no, there are not that many number of markets.

Q And if the State is a market, what would be the change in number of alternatives during the period of Exhibit [1058] D-4? Wouldn't that be the change in the number of banks?

A Well, following the previous line of questioning, sir, I would say that the number of alternatives would, in fact, be the number of offices available, but one could argue that it was simply the number of banks.

Q I mean if we accept your market as the entire State, then wouldn't it follow that the number of alternatives is the number of banks in the State?

A From one point of view, certainly, ignoring what I have said about markets as defined by branches, yes.

Q But unless you are changing your position, the State isn't a market in that it—in fact, we should look at neighborhoods for some other area?

A I was trying my best to follow the same reasoning, and you forgive me for my obvious confusion. If we deal with the word "market"—and incidentally, this confusion is not just mine, it is one of my criticisms of the FDIC approach to examination—if you define market as any place where a bank or branch is—can suceed or is likely to succeed, then that number is large, if you mean by market that some area in which corporate entities called banks, regardless of how many branches they may have, can exist, then the State is that area, and for the concentration ratio purposes, we don't use branches, we do, in fact, use corporate entities, and in that context the [1059] the number of banks did, in fact, decline from 1955 to 1971. Although—I'm sorry, it declined to about '69, and then began to increase in '69 on slightly.

Q By one or two?

A By one or two, but as I say, there are some in the wings which will push that number up significantly.

Q Of course, when you look at the number of banks, as you have done on that table, if two 500 million dollar banks merge and one new one million dollar bank comes into existence, would that be reflected in merely counting the number of banks?

A It would not, per se. It would not, certainly in this context, indicate any.

Q And would you consider that to be a fair showing of the market in Connecticut, merely looking at number of banks and disregarding their size?

A I think I made—I hope—clear that my position is that it is the number of consumer alternatives that would be the fairest measure, but in answering your question precisely, since this is what you want, if two hundred —two 500 million dollar banks did, in fact, merge and another bank replaced them with a new creation of a hundred million dollar bank—

Q I mean a new bank starts from scratch with a one [1060] million dollars.

A One million dollars.

Q That's what they normally start at, isn't it?

A Well, the answer to that is: no, but let's give it any small figure, usually considerably above a million. It would certainly be competitive, obviously.

Q Would you say the effect on competition in the State would be the same if there were the same number of alternatives, but two 500 million dollar banks merged a new small bank was started, would that be the same as having two new independent 500 million dollar banks?

A May I comment?

Q Yes.

A The problem, of course, if we're playing what is called in the literature the numbers game by counting the number of participants in a market and trying to discover the quality of competition by counting them, as well, by indicating their relative size, and that, I think, is a perfectly fair game, everybody does it, but I think you have to go well beyond the numbers game to get some picture for the quantitative aspect, but if in Connecticut two large banks combined and caused a number of banks

to decline, that would represent fewer banks and, therefore, less competition.

Q And then if one new small bank started, your table [1061] would show that there were the same number of alternatives in the area, wouldn't it?

A Yes, of course, by the numbers game rule, you will still have the same number, so the quality of competition, unless otherwise—would not change.

Q Would you contend that the quality of competition would be the same?

A No, I wouldn't on those grounds alone.

Q There's no way to tell from Table D-4 about the quality of competition, then, is there?

A I don't see any, but I'm not sure that was the intent.

Q Perhaps I misunderstood the intent of D-4.

A I must say that I do not know because I didn't prepare this.

Q Let's take another example, using an SMSA, for example, the New Haven, SMSA, assume—do you know how many towns are in it?

A As I recall, there are eight—I'm sorry, there are more than that, there are 12.

Q Let's assume 12, it is of no importance, assume a new bank entered the New Haven SMSA over many years and established a branch in every one of those towns. Would your table D-4 then show that there were 12 increases?

[1062] A You said "Your table D-4".

Q I'm sorry, it's not your table. I understand it's defendants' table.

A I didn't prepare it, so would you repeat the question.

Q In the 12-town New Haven SMSA, if over a period of a number of years a bank established one office in each of the 12 towns, would D-4 show 12 increases?

A I think the answer to that is: yes, as I understand this.

Q And yet, there would only be one new bank in the New Haven, SMSA, isn't that correct?

A Yes, but looked at from the point of view, shall we say, of East Haven, there would have been one more bank in East Haven than there was. And that, I think, is significant.

Q Pardon me?

A That, I think, is significant.

Q Wouldn't you agree that, actually, you are multiplying the number of alternatives in the area by 12?

A Yes, you may remember that I made the point earlier that John M. Blair, who certainly is not in favor of concentration, made this point, that in the comparison one should not look just as corporate entities, one should look at the alternative that the corporate entity provided, [1063] how many units did it actually provide, just to look at A&P without looking at the number of stores that actually—stores A&P actually had, you could not measure.

Q You indicated that commuting was a matter of some importance in placing a new banking office?

A I did.

Q Would it be a basic assumption, then, that convenience to the customer is of some importance where he decides to bank?

A No doubt. I'd agree.

Q Is it very important?

A I would say so.

Q What's your basis?

A Well, my basis is really upon observation of patterns of behavior. I have never really had to answer this question quite this way before because it's sort of been assumed in every—we have done, but I would have to say the answer is: if a bank is where people cannot reach it, then you would wonder what was the purpose of that branch. A branch in Thompsonville in the back woods would, I think, be a mistake. So I would assume that the bank would be put relevant to the flow of trade, just as every other retail enterprise and most business enterprises—incidentally, markets would be typically defined in terms of the product activity of [1064] the pattern of flow of trade.

Q So, then, would a bank want to place its offices nearer to the people it wishes to serve as possible?

A Yes.

Q Would that be true for the group of customers you have titled small customers?

A Yes.

You may remember my citing the case of the so-called Stratford line branches where they were unable to get into Stratford, the Bridgeport banks did, in fact, place their branches right on the city limits to reach Stratford.

Q And were those branches effective in reaching the area?

A They grew rapidly.

Q And I think you also mentioned as another group of customers, a very large group, of corporations?

A Yes.

Q And you gave some dividing line for their business?

A Yes. I've forgotten what it was, but it would be a large figure.

Q So typically with that class of customers there would be a corporate treasurer making the decisions for the company?

A Their location would not be as important. For that [1065] kind of customer, he might go some distance to look for a 7 million dollar loan. All the way to New York.

Q And he might go to Chicago?

A Chicago, Boston.

Q Atlanta?

A Philadelphia.

Q And if he does business throughout the country, he may bank throughout the country, too?

A Major corporations such as General Electric, might do this, although they would maintain balances, in fact, in every community. But as a matter of fact, there isn't too much evidence to suggest that corporations range the country looking to borrow money, they're likely to end up at certain market centers.

Q But they do have as alternative centers of capital throughout the country?

A It would be possible to argue, as was argued in another case, that, in fact, for the very large wholesale banks, their market is what is described as the entire United States. Since they're in competition with banks all over the map and, indeed, outside the country.

Q You mean a large corporation, then, might even do business in London or Zurich?

A No doubt.

[1066] Q Or other word—

A Something called the Eurodollar, which is certainly available.

Q I believe you had testified that prior to 1969 there were five separate banking markets in Connecticut?

A Yes, I would say that de facto there existed five such markets, which could be quite easily defined.

Q At that time, again, prior to 1969, did you believe there was substantial commuting by people between the markets you have outlined?

A Rather than, if you will forgive me, limit me to one year, what was happening over this period was the emergence of a statewide network, the Connecticut Turnpike, for example, as in place by late '50's, Route 84 was in place by the late '60's, Route 91, which greatly shortened the distance from Bridgeport and New Haven and from Bridgeport to Hartford, was in place by the late '60's, so that without taking into account these highways which had made—extraordinary difference in the commuting patterns, I couldn't answer your question, but if you will permit me to introduce this kind of information, certainly, the emergence of this highway network, the interstate network, has made a considerable difference and has tied these markets together.

Q I assume you have not had the opportunity to see the [1067] plaintiff's exhibit which was based upon census data as to commuting patterns?

A No, but I have seen similar data, you mean Doctor Glantz' testimony?

Q Yes.

A While I didn't look at it in detail, I did look at it, yes.

Q And then were you aware that census concluded there was an insignificant percentage commuting between the different SMSA's?

A Well, I didn't—I didn't either draw that conclusion from the census or from Doctor Glantz' testimony, but if such evidence is presented, I must say just from my own observations, it is clearly unusual. I know personally something about the pattern of commuting as between, certainly, the Fairfield County SMSA's, may I point out that I completed under a Department of Labor Grant and an OEO grant together with some associates for the Connecticut Manpower Executives Association and City of Hartford a manpower forecast for the 17 labor market areas, and my associates and I had the task of trying to discover what was going to happen to the labor forces.

Now, we looked at the Hartford labor force, for example, and discovered that on no population count could you account for the Hartford labor force, that it was a bit something like 40% [1068] of that labor force was clearly in commuting, and we examined similar patterns in New Haven and in Hartford and in Stamford and Bridgeport, then tried to project and consulted with the Department of Labor on what these labor market figures might be, and concluded that there was substantial in—let me give you a specific example.

If you take the labor force for the Hartford LMA, the labor market area, you will find that to be around 190,000, if I recall, during the current year, and if you look at the Bridgeport LMA, you will find that to be around 175,000. Now, in any reasonable reading of labor market participation rates, something is wrong since the population in the Bridgeport SMSA is significantly greater than the New Haven SMSA, how then do you account for the fact that the New Haven labor force is so much larger than the Bridgeport labor force, we can only account through examining commuter pattern, and commuter patterns reveal that as between—while net commuting—counting, that is: between Bridgeport and New Haven might be minimal, the crossing event of the gross turns out to be very large, and that's a matter of where

you drew the line, but our evidence—and, therefore, our forecast for the 17 labor market areas in Connecticut took into account substantial commuting.

[1069] BY MR. BENTKOVER:

Q When you established the five markets, commuting was not a factor; is that correct?

A I would say that at the stage that when these markets observed—emerged, there was less—much less cross-commuting than now. Not that there was none; there was always some at the edges.

Q When you established these five markets, were you interested in the amount of business which banking offices in one market held in another market?

A Well, what I was trying to do, to be quite precise, was to find that market in which I could put together banks that were in fact competing, and, from taking whatever particular evidence I had about their behavior, I established those lines. One such evidence, of course, was their branching, but another evidence had to do with their whole set of reactions; and I think it would be clear that sometime by the early '60's this de facto market did in fact exist in each of the five separate areas. There's some uncertainty about the mid-state area.

Q Would you accept that banking offices in one market did not draw substantial business from another market?

A By and large, that would be true. There are some questions.

[1070] The reason I approach mid-state with some care is that—remember that I defined New Britain, Bristol, Middletown, Meriden, as a fifth district, and one would have to be awfully sophisticated to assume that New Britain was in fact separate from Hartford. I'm sure the Governor does.

Q Then, in 1969, the markets changed, and I think you—

A Well, what happened was that a new market emerged simply because—you see, if you follow the rule that I was following, which was minimum disembodiment—in other words, that I would be picking up with concentration ratios almost the entire bank—now,

the district permitted minimum disembodiment. Once we had penetration, then the only market that would pick up minimum disembodiment was statewide, particularly for the largest banks.

Q So when, in 1969, you say the five markets became one market, you are not saying that suddenly people began commuting among all these areas?

A No, I'm not saying that.

Q That was not the reason you said there was not one market?

A I'm saying at that stage what happened was that every bank in the State in these markets had then to take into account banks in other markets, whereas they could [1071] continue to behave as long as the de facto markets existed as if there was no competition from adjacent markets. A Bridgeport bank might set any rate that it wished without considering what a Hartford bank—what a Hartford bank or a New Haven bank was doing. But that no longer was true.

Q You are not saying that in 1969 suddenly banking offices in Hartford began drawing a lot of business from New Haven, Bridgeport or some other area?

A What I am saying is that the banks held by Hartford banks in the new areas did in fact begin to draw business away from—

Q You are now talking about branches which the Hartford banks placed in those other areas?

A Yes.

Q Acquisitions? You are not talking about the branches back in Hartford?

A Now let me back up and say that it was likely that this would take place. You will notice that these tended to go together. We began to get our highway network, and shortly thereafter, after it was in place, we got our statewide branch banking. It was not at all hard to predict that when the conditions were right the market would emerge.

Now, I don't say one causes the other, but certainly an economic geographer I think would argue that, in [1072] the absence of any legal restraint preventing it from happening, the market would emerge in this fashion.

Q So for you the thing that made a single statewide market was the establishment of perhaps a dozen offices in 1969 by the Hartford banks in the New Haven and Bridgeport areas?

A So that the pattern of behavior observed on the part of the banks in the State had to be explained now by factors occurring outside of their preexisting markets.

Q So are you saying now if there is a statewide market the rates that banks charge on loans throughout the entire State is the same?

A There certainly has to be some comparison.

Q I mean have you made a study and you found that the rate—

A I have not.

Q —throughout the entire State is the same for a certain type of loan?

A I do not, of myself, know this. I do know, however, how banks do it, and if—since it's a retail organization, basically all you have to do is open the paper and see what the loan rates are; and I do know, for example, that as between Bridgeport and New Haven, which I used to look at quite carefully, because I would sometimes go to New Haven because it was to my advantage to go to New Haven—I could get a [1073] higher rate of return on my money, I could get a cheaper loan—well, that's gone; there's no point in my going to New Haven.

Q So that, in a sense, competition is being cut down by the movement of these banks throughout the State?

A I would call that an increase in competition, not a cut in competition.

Q Before you said rates were different, you could move around from one city to another to get a better rate?

A But under economic theory the existence of a market—forgive me for this—is evidenced by the behavior of the competitors as if they were in fact competition, and, if previously they did not fuse in numbers and did not behave this way and now they do, then there is in fact more competition.

Q Are you saying that if your theory is correct that there is a statewide market, wherever I went in the entire

State of Connecticut I would find the same rate given on a certain type of loan?

A I don't of my personal knowledge know that's the case, but I wouldn't in any way be surprised if it was the case.

Q You have not verified this fact in any way in reaching your theory?

[1074] A Apart from looking at the advertisements as they have apeared—and they've certainly be generous by the Connectict Bank & Trust Company, the Hartford National Bank—and then comparing the results as I see them in the other banks, I have not done it now—let me see what I've done—in other words, as a cursory check to see whether or not there was any change in behavior, I did not at this stage involve myself in a precise check to see what the pattern was; and I expect someone to do that.

Q So you have looked at what advertisements? You have seen them in the newspapers?

A Yes. One could hardly avoid them. They're full-page advertisements.

Q Have you seen advertisement for the rates charged on commercial and industrial loans?

A I have not. However, the means of dissemination of information here is by word of mouth, and it is unlikely that it is kept entirely in perpetuo.

Q Do you know what rate the Connecticut National Bank pays on passbook savings accounts?

A To my knowledge, at the moment I think it's 4 percent.

Q Do you know what rate the First New Haven National Bank pays on passbook savings accounts?

[1075] A I do not at the moment. But I—the reason I know the CNB is because I moved out of CNB for that reason.

Q You do not know, then, what the rate is?

A You see, I went to my nearest competitors, looked at some of the other banks in this area, but I wouldn't—I do not know what the area rate is, but I do know—

THE COURT: Can we agree on that, if it is important?

MR. CLARK: I believe it is 4½ percent.

MR. REYCRAFT: If someone will tell me what First New Haven is, I will stipulate it.

We will put it in the record, your Honor.

THE COURT: Why don't we.

THE WITNESS: I'm afraid I'm not the witness to ask that question of. I don't know.

BY MR. BENTKOVER:

Q Then assuming that the rate is 4½ percent, how could that exist in a statewide market?

A I do know that right across—I don't have to go very far from CNB to find such a rate even in Bridgeport.

Q So, when you say there is a statewide market, I think you only said that bankers will take into account something which no other bank does?

A There will be a tendency toward a similar price. [1076] I should point out the fact that if bread is being sold, we don't have to establish the price of bread is exactly the same, but, as the patterns of change take place, they move in essentially similar directions; then we would assume there's competition. Competition may be imperfect, as doubtless it is.

But, moreover, I think I would have to argue, if I were looking at the objective fact, when First New Haven made its decision, what did it do in making that decision? Did it in fact take into account what CNB—and did it find that CNB—that it was by itself? And State National didn't reduce it, or Lafayette didn't, or that Bank of Stratford didn't.

Q So you are saying that the bank takes a lot of things into account in addition to what the newer bank—

A In an imperfect oligopolistic market, the tendency is to see what anybody would want to see if the price pattern is being followed by the entire group; if not, you would not follow it, you would examine it to see what the others are doing.

Q Assuming that the First New Haven and Connecticut National Banks do charge a half percent or do offer a half percent difference in passbook savings, wouldn't

that be an example of competition being eliminated by this merger in your [1077] statewide market of Connecticut?

A Well, if—only if those two banks in fact had a predominance in this field and there were no other behavior. If I happened to know that right down the street from CNB I could get the higher rate than First New Haven, it would not be of much importance to me. I'd have to look at the whole pattern, if I want to examine price behavior; I've really got to see the price behavior of the entire market to see how it changes.

Q There would be some lessening of competition, wouldn't there be, if First New Haven holds a larger share in New Haven and Connecticut National holds a larger share in Bridgeport?

A I would say essentially no, really. I'd say the competition would be about where it was. If you combined the two markets, essentially no change.

Q You stated that you believe banks follow a unitary pricing policy throughout their entire system; is that correct?

A To my knowledge, they would operate essentially within their district a servicewide—or a districtwide service policy.

Q Do you know whether this merger, if it is ever consummated—whether the Connecticut National is going to [1078] raise its rates or whether the First New Haven would lower its rates?

A I'm afraid, sir, you wouldn't want to ask me that question. I would not know.

Q There are other areas of competition, other than rates, aren't there?

A Oh, by all means there are. We prefer not to compete in rates if we could.

Q It is cheaper to compete in other ways?

A This is what we normally observed, compete in terms of premiums, better service. We stress all of this.

Q In concentrated oligopolistic markets, this competition tends to be more important than price competition?

A By and large, price competition is entered only when necessary in a concentrated oligopolis. This is why follow-the-leader patterns are so common.

Q What areas of competition would there be besides rates and premiums? Would hours be one area?

A Yes, the number of hours open, rapidity with which you could get your service, how quickly you would get your loan.

You will notice that that's what they often say, next-day loans. We tell people that we have a listening ear, all those kinds of things, you have a friend at Chase [1079] Manhattan, and this sort of thing indicates that it's a friendly approach in that giant bank. All of these are said to make the customer choose one as against another.

And location is a factor.

Q To the extent that the First New Haven and Connecticut National differed in any of those areas and assuming they follow a unitary policy after a merger, would there be some elimination of competition?

A My guess would be that once again the sitaution would be status quo ante. There would be little, if any, change, since I suspect—and here I can't speak—they would be in fact following essentially similar policies. I observe that when it comes to this no-charge checking account that's certainly spread like wildfire, very quick, I know it was at a disadvantage to many banks to do it.

Q You are assuming that banks are similar right now?

A In general, I would say that was the case. In general, I'd say all the banks were essentially similar. One really has to search for differences among banks.

Q Would you consider it to be a difference of any significance if you found one bank had much longer banking hours during the week than another bank?

A It would certainly be a factor.

Q That would be fairly important to a consumer, [1080] wouldn't it?

A It would.

Q If, because of a merger and the unitary policy which you think exists, these changes were eliminated,

there would be some elimination of competition, wouldn't there?

A There might be. I would suspect, however, that the reverse would be true, that some of the things that were done that were alert in attracting customers in one bank might descend to the other, rather than the reverse.

Q But the customer would have no choice, would he?

A Well, in this area he would have no fewer choices in Bridgeport than he does have now and no fewer choices in New Haven than he does now. He would size up pretty much where he was.

Q So that you are really saying, then, that there is a market in New Haven and there is a market in Bridgeport, and, since a customer does not go between the markets, he is not affected by the merger; is that correct?

A Well, insofar as the market relationship, the size of the market, there would not be this factor. I am not saying, however, that customers do not go from one area to another. You earlier had led me to talk about commuting patterns, and I'd have to examine what those commuting patterns were and discover—I suspect, incidentally, that [1081] the whole MODA overlap is due to the fact that the intercommuting between New Haven and Bridgeport is significant. That's why we have the overlap.

Q That is just a suspicion? You have not made this study?

A I have not made it. I've been one of those who has gone to Milford, however, to reach First New Haven.

Q I believe that the First New Haven National Bank has a branch in Wallingford?

A It does.

So does State National.

Q Does Colonial also have branches here?

A Yes.

Q Where is Colonial located?

A Colonial's headquartered in Waterbury.

Q Does Colonial, to your knowledge, have most of its business in Waterbury?

A Yes, to my knowledge it has most of its business in Waterbury and to the north of Waterbury.

Q Then it does have a branch or two out in Wallingford?

A As well as penetration branches into Fairfield County.

Q Let's assume that the Colonial Bank changed its rates on passbook savings in its home town of Waterbury. If [1082] your theory of unitary pricing is correct, then the rates in Wallingford would change, wouldn't they?

A I would expect that the branch in Wallingford would be the tail that would be wagged by the dog in Waterbury.

Q Then the First New Haven National Bank would have one office in Wallingford—and would you say that that is the First New Haven National's tail?

A Yes.

State National is there, too.

Q Where is the dog of First New Haven? In New Haven?

A In New Haven.

Q Is it your theory that if the Colonial Bank changes its rates in Waterbury and that rate is reflected in Wallingford, this will somehow wag the tail of the First New Haven National Bank and cause it to change its rates in New Haven?

A If there were only one contact between the dogs, at that point this would not be likely. I would say no, there would be little, if any, impact. However—however, in the case of Wallingford, knowing the relative size of these, probably this would not lead to any change.

Q So would you think—

A I'd have to have more overlap than that.

Q Do you think that the First New Haven National Bank [1083] would look toward the banks with which it is in most direct competition?

A Correct.

Q And the leading bank would be the Second New Haven National Bank, wouldn't it?

A My guess would be that it would regard CBT as its leading competitor.

Q Do you know what percent CBT holds in New Haven?

A Well, you see, it has, as I recall, 5 percent—5, 5.2, something like that. But—

Q If the Second New Haven National Bank—would you agree that is the second largest?

A Second largest disembodied share.

Q If it changed its passbook savings rate, would you expect that that would have some impact on the First New Haven National Bank?

A To be sure.

Q And it would have a good deal more impact if it changed by the Colonial Bank?

A Yes.

Q A passbook savings rate basically would affect smaller customers, would it not?

A Yes, by law.

Q You have stated, I believe, that the great impact [1084] of CBT is in the large customers who need large lending limits and sophisticated service?

A I would have supposed that that was CBT's approach, but I look at the CBT ads and it looks to me like they're trying to reach the entire spectrum. They haven't left me alone.

Q But the amount of business they have from the smaller customers is still not that large, according to our percentages; is that correct?

A But they're out to get it, and it seems to me one cannot use—when you have a bank which just entering—it's a situation which you led me to talk about when I talked about a branch. I would expect that branch to be engaged in active, aggressive behavior to take over that market, and I'd expect CBT to be engaged in similar aggressive behavior.

Q Are you saying, then, that when a bank does enter a new market it has to be more aggressive in order to gain a foothold?

A No question.

Q In a new market that a bank enters, would it want to perhaps consider offering things which banks in the market do not offer?

A It would certainly want to differentiate its product to the extent that it was possible.

[1085] Q Entering that new market does impose some pressure then, on the entering bank to try to innovate and offer things which the banks in the market are not offering?

A Yes.

Q So that from a competitive point of view you would consider the impact of a bank entering a market to be fairly substantial?

A Correct.

Q Doctor, you have made projections on the growth of the large banks in the State?

A I have.

Q Would those projections be based on some assumptions of the banking potential in each area the banks do business?

A Yes.

Q So that if one area grows more rapidly than another it would be reflected from your projections?

A In projections I presented no—since the projections are for the entire State—but there would be such interrelationship as to take account of this. They would not be apparent in the figures I presented, no.

Q Would your projections be resting on some assumption of economic growth in various areas of the State?

A Very much so.

Q Did you make those assumptions?

[1086] A Yes. For example—

Q They are not stated on the exhibit, are they?

A No, they're not.

For example, in forecasting the position of the Hartford banks, I took explicitly in consideration the fact that they had penetrated in New Haven and Fairfield Counties and assumed that a significant share of the growth would in fact be obtained in those new areas.

Q Did you consider the economic growth, then, in those areas?

A Yes. These are in fact—Fairfield County is the fastest growing area in the State. It now constitutes one-third of the State, whereas it once was one-quarter,

and, in terms of economic impact, it's probably larger than that.

So that this would certainly represent a factor which would influence the rate of growth of the two Hartford banks.

Q Have you considered the growth rate in Bridgeport?

A In the Bridgeport SMSA or in Bridgeport City?

Q Yes, in the SMSA.

A Yes, I have.

Q The SMSA, of course, is composed of the center city and the suburban areas?

[1087] A And seven other towns.

Q Typically, how would you compare the growth rates in the suburban areas to the growth rate in the center cities in Connecticut?

A Well, as Dr. Glantz observed, the growth rates in the suburban ring are faster than the growth rates in the central city. That's not just true of New England; that's true nationwide.

Q So that if a bank in considering an area with good growth potential, it would probably look tward the suburban areas to establish new banking offices; wouldn't they?

A Let me answer that in two parts.

The answer is yes, but there would be certain urban neighborhoods which would be growing apart from the over-all fortune of the city, and this would also include the central business district, so that, whereas there might not be an increase in the population of the city, yet the —there's something called the so-called daytime population of a city. The daytime population of New Haven CBD is 85,000 people. Now, this population doesn't live there, but it's there around Church Street and does therefore represent a factor. So I couldn't look simply at the population growth. Now, there would be the university population. One might establish a branch at a university even though these people [1088] are only there nine months a year and not counted as a part of the population, but they are in fact part of the—so that a bank in expanding might certainly tend to favor the growth

areas. The majority of those would be outside the city limits, but there would be many within the city limits and CBD would clearly be one of them.

Q If you were to make a comparison of the inner cities of Bridgeport or New Haven or Hartford to the economic performance of the entire State, I expect you would find that the cities would not equal the growth of the State; is that correct?

A Correct.

Connecticut Bank & Trust Company has performed just such an analysis.

Q Would the reason be that when you compare it to the entire State you are comparing it to an area which is made up of center cities and fast-growing suburban areas?

A I want to be precise in my answers. I take it you mean by "growth" growth rates in population?

Q And other economic indicators.

A But if I take, for example, employment, the City of Bridgeport in total factory employment has not really declined; indeed, it hasn't declined in population.

Q Is that of any significance, that Bridgeport has [1089] not declined in population? Would you compare it to other cities?

A Among the hundred and eighty-five SMSA's east of the Mississippi River and north of the Mason-Dixon Line there are exactly seven in which one can say that a central city did not decline, and of those seven Bridgeport, Stamford, Yonkers, Paterson, Allentown are, in fact, associated with New York. Every other SMSA with one—maybe there's one other exception—showed central city declines.

Q So Bridgeport's performance over the last decade was somewhat outstanding, then, in terms of population?

A It was unusual as contrasted to the rest of New England. No other New England central city did not decline. I'm using census figures.

Q When you try to make an assessment of the economy of a city, do you look at other cities to compare it to?

A I most certainly do.

Q Is that a more valid comparison than to another area, such as a state?

A This is what I was attempting to establish, but, if I was concerned with how I interpreted Bridgeport's behavior, I compare Bridgeport with Springfield or Worcester or Providence or New Haven or Hartford or Syracuse or Rochester.

Q Do you have a copy of the Masters' report with you?

[1090] A I do have.

Q I think it is D-60.

A I do have.

Q In your discussion of the Masters' report, you indicated the amounts of business which New York and Boston banks draw from Connecticut.

Does the Masters' report break the amounts of business done by area within Connecticut down?

A For the Boston banks it does.

Q Would you look at the Boston banks.

A Table 16.

Q That is page 16?

A Pardon me—page 16.

Q Would you turn to that page, please.

A I have it.

Q Would you look at the amount of demand deposits. It is about 31,000,000 isn't it?

A Correct.

Q In Fairfield and New Haven Counties a total of about 11,000,000?

A Yes.

I must say I'm surprised to discover that it is larger in Fairfield County than it is in New Haven County, given the traffic flows from Boston.

[1091] Q Would you consider $11,000,000 to be of any significance in the entire New Haven and Fairfield County areas?

A No, but it's the size of a good-sized small bank.

Q Would you look at the—

A The size of the Bank of Stratford, for example.

Q Which is not a very large bank within its area; correct?

A But one that is growing quite rapidly.

Q Would you turn to the section on New York.

A All right.

Q What page is that?

A I think that was 23, wasn't it?

We don't have quite the same breakdown for New York that we do for—

Q In fact, from page 23 you cannot tell where in the State of Connecticut these deposits originate, can you?

A You cannot. You cannot.

Q There is no way to say how much comes from Bridgeport and how much from Hartford and how much from New Haven?

A No.

Q You can only guess on that matter?

A One would have to guess.

[1092] Q I believe this morning you thought this estimate of deposits might be 50 percent low?

A No. What I said was—I was looking down at the footnote, where it says Bankers Trust Company estimates. Its information is approximately 50 percent accurate.

Q That is the only, Bankers Trust Company, when you mentioned 50 percent?

A I think I intended to say that the figures were probably low; how much low I didn't know.

Q Did you read footnote one, where the Master comments on that point, and he says "It is fair to say, however, that the figures in each instance are low," and there he is referring to the amount of incompleteness?

A Yes, yes, I was influenced by this remark of his.

Q So the Master estimates that the amount of incompleteness is fairly low, as you understand that, isn't it?

A No. I interpret that to say the figures in each instance are low, not that the incompleteness is low. If I read it, it says the degree of incompleteness cannot be estimated. "It is fair, however, to say that the figures in each instance"—I gather that to be the figures in connection with the accounts and the dollars on deposit are in each instance low.

[1093] Q Let's look at the sort of business which the New York banks do in Connecticut.

I think you mentioned that there may be some commuting business; that is, business from commuters in Connecticut who work in New York?

A There are Grand Central branches designed to handle that business.

Q Would you agree that the commuting area in Connecticut is basically the Norwalk and Stamford SMSA's?

A It is the so-called west end territory of the New Haven—of the former New Haven Railroad.

Q I am not familiar with that term.

Q The west end is that electrified area from New Haven into Grand Central and with a spur into Penn Station, Penn Central Station.

Q Then the amount of business which the New York banks do from commuters would be reflected by the amount of people who do commute from Connecticut, and—

A Well, I think you would probably lead me to say that there were some fairly large accounts among the commuter accounts.

Q There is a second category?

A Yes.

Q Let's stay with the commuters.

[1094] A With the commuter accounts, I'm sure these would be significant.

Q If, in fact, you found very few from the New Haven area commuted into New York City, would you conclude that the New York City banks probably do very little business with commuters or do very little business with persons in the New Haven area?

A Well, the first I would conclude; the second I'd have to look at. With commuters? Since there were few, it would have to be concluded that there was little business, but as the number of commuters increased the business would increase down the line.

Q Would you agree, then, as far as looking at the retail business, the small business in the New Haven area, if there are very few commuters, then the New York City banks probably are not doing much business?

A Well, may I introduce a part of the legend of this area. The legend is that there are three kinds of people in the commuter territory: There's the commuters, the clamdiggers and the artists.

The commuters go regularly to New York.

The clamdiggers never go.

And the artists only when they want to earn some extra dollars. The artists we haven't accounted for. They [1095] also take the train occasionally, and they might well be influenced, how large this artist count is, the consultant, that sort of person. I'm sure that would be a multiple of the commuter figures.

Q Then the amount of business done with the smaller persons, retail business in the New Haven area, would depend on the amount of commuting done to New York?

A Commuting plus irregular trips to New York City.

Q If the amount of commuting done from the Bridgeport SMSA to New York is likewise very small, would you conclude that the amount of business which New York banks do with smaller retail customers would also be fairly small?

A You would call 2,000 commuters regularly out of Bridgeport Station a day, representing 72,000 households, not really small.

Q But if there were in total, say, 140 or 150 thousand, it would be relatively small, wouldn't it?

A Yes. It would be relatively small, but when one gets to that kind of dimension one's beginning to think about something, and it would increase down the line. Then to that one would add such people as myself, who I presume are counted among the artists.

Q That is a new category for an economist.

Would you conclude, then, that the amount of retail [1096] business which New York banks do in Connecticut would be in those areas where there is most commuting into New York?

A I would certainly be inclined to this that was the case.

Q So that the effect—

A But I don't know that of fact—for a fact.

Q But it is your assumption?

A Yes.

Q I think you said there may be another category of business done by the New York banks in Connecticut?

A Yes.

Q Other than the smaller retail business?

A Yes.

Q That would include the large corporations?

A I would assume so.

Q Those corporations, you indicated, may bank in Boston or Chicago or New York?

A Correct.

Q Or any money center?

A Correct.

Q One wishes they would bank more in this area.

Have you been able to make any breakdown, given the figures on business done in Connecticut by New York banks, of the amount which represents commuter business and the [1097] amount which represents large corporate business?

A No, sir, and for two reasons.

I really didn't see these figures until they were handed to me.

Q When was that?

A I had heard about them, but I had not seen them until this very morning, so I have not had a chance to attempt any reasonable analysis as to what proportion I might think were commuter accounts. I would have attempted to make such breakdown if I could have.

Q But you have not done it?

A No.

Q And it played no part in your testimony this morning?

A I answered from what was handed to me.

I did refer, you may recall, this morning to the fact that the large stores which had branches in this area may not—apparently their accounts—reading the back of my checks, I see they're being handled through New York banks, and this volume is an effective volume for a bank to have.

Q I think you also stated that the business shown for the Hartford banks was not done in the Hartford area offices but was done in the offices in New Haven and Bridgeport; is that correct?

[1098] A Would you repeat that question?

Q Turn to page 11.

A Yes.

[1099] Q Was your testimony based on your belief that this business came from offices within Fairfield County and New Haven County and Bridgeport?

A What business do you refer to?

Q Business done by the Hartford area banks?

A Yes.

Q And you did not assume that it was business done by the entire bank through its offices in Hartford, say?

A Well, in answering very specifically from the data in front of me, I simply assumed that the recorded deposits, savings deposits and other indicators of activity referred to the branches specifically described. The other testimony I was attempting to show a branch would bring to bear at any points its policy choice.

Q Do you have Exhibit D-14 with you?

A Exhibit 14? I do.

Q The one relating to capital structure?

A Yes, this is it.

Q If a bank decides that it will take the profits it earns in a year and paying much of those profits out in dividends, how would that affect its capital structure after a number of years?

A It would not permit as much capital accumualtion, other things being equal.

[1100] Q So that if a bank made the decision that it would rather pay out profits to shareholders rather than retaining them, its capital performance as shown on this table would be lower?

A Yes.

Q And if it decided to retain its earnings, if it decided it wanted to grow, it would pay out less dividends, wouldn't it?

A Assuming that it did not resort to other forms of capital accumulation. This is why I said: other things being equal, assuming that it did not offset its dividend payout by new issues of securities or other forms of capital acquisition, yes, that—

Q So that a bank could increase its capital by not paying out such large amounts of dividends?

A It could.

Q And what are the other ways?

A Additional securities.

Q What kind of securities?

A Excuse me, additional stocks, stocks, providing that the charters permitted, it could sell more stock.

Q Is there any other way to increase capital besides selling stock?

A Well, through other maneuvers, any form that permitted them to increase the amount of equity, yes.

Q And this is done fairly commonly, isn't it, by banks [1101] which do need to increase?

A It is done with—done with less frequency than one would expect, but it is done.

Q And would one way—or would capital increase if a bank issued shares of stock in exchange for shares of another bank through a merger transaction?

A Well, this is a bit complicated, but this would be one of the ways, it would, of course, depending upon the nature of the merger—it would acquire all the capital and surplus and undivided profits of that bank.

Q So that these lines you have drawn on Exhibit D-14 would reflect merger activity by banks?

A Oh, yes.

Q And it would reflect dividend policies of a bank as far as paying out more or less dividends?

A It would reflect whatever it was that caused the capital to increase.

Q And it would reflect decisions on whether or not to go into the capital markets?

A Correct. As between CBT and Hartford National, we know that CBT's been somewhat less reluctant to come to the capital market than Hartford National.

Q So all of the decisions, then, to increase capital are really within the hands of management, aren't they? Whether [1102] or not to increase dividends, whether or not to go to the capital markets, whether or not to merge?

A Well, in the sense my answer must be derivative that it sture to the extent that there are—one has to assume that, for example, the dividend policy is not dictated by the need to maintain dividend payout, to keep the price of the security up, that it is not dictated by other such factors, one would also have to assume that

the rate of profit which is, of course, a residual from the operation, which does not depend upon these policies, was sufficient to permit the dividend payout at a rate which would support the price of the security and with those factors in mind, and I think—I think I have stated most of them, it would then make its choice, it is not a choice it would make without those considerations, however, so its capital build-up decision are made in an arena in which there are a variety of factors impinging upon those decisions.

Q And in your discussion this morning on Table D-14, you did not consider exactly what methods each of the changes among the capital positions of the banks arose?

A All this does is record what did, in fact, happen.

Q All you did was just plot dots on the chart showing the—

A And connect them.

[1103] Q —and show what effect, in fact, was shown in the balance sheets?

A These are not regressions—regression lines, these are simply lines charts—lined—extensions between the points.

Q Do you know how many banks there are in the United States today, commercial banks, that is?

A Well, the figure frequently used is 14,000. Somewhere in that vicinity.

Q And do you know approximately what range the defendant banks are?

A Yes. They're among the—I believe toward the bottom top 200 for the Bridgeport bank and toward the top of the next—pardon me, did I say bottom? I'm sorry —for the bottom of the top—I have a photograph in mind. Every year—or every six months, the American Banker issues a listing of all the banks.

THE COURT: Can I get that figure?

MR. BENTKOVER: Excuse me, I think I have it somewhere in my files.

THE COURT: For both banks?

MR. REYCRAFT: Yes, sir.

MR. BENTKOVER: I have it, your Honor, and I will show it—

[1104] MR. REYCRAFT: If he has it, I have no objection.

THE COURT: All right.

A I have it in mind, and that listing is a listing which is the official—which has become the official listing. It's a familiar presentation. Yes.

Q What is the ranking of the Connecticut National Bank among the 14,000 commercial banks in the United States?

A 186, 186.

Q And what is the ranking of the First New Haven National Bank?

A 268.

Q And the source of this is what, Doctor?

A The American Banker.

Q And you are taking it from an article you wrote?

A Yes. You have done me the grace of quoting it for me.

Q So that, actually, there are about 13,800 banks in this country smaller than the defendant banks?

A Yes.

Q Or perhaps 98% of all banks in this country are smaller than the defendant banks?

A Correct.

Q So that by any standards other than the largest banks in the world, these are very large banks, aren't they?

[1105] A They are. May I add to that, or would you prefer—

Q I take it it is your position that banks this large still are under some pressure to merge because there are even larger banks than they are?

A Yes. You have—let me say that the American Banker listing has meaning only if one assumes that the marketplace is the entire United States, and the assumption, therefore, is that these 14,000 banks compete equally throughout this market. Now, except for the nice feeling that you know where you are, in fact, that doesn't describe reality at all, the great majority of these banks are to be found in unit bank states west of the Mississippi and south of the Mason Dixon Line, and are not

in any sense in competition, and you would—I think, almost every one would agree that one would have to define the market in whether banks actually meet cheek by jowl in some way, so that the real position of a bank is in terms of its market, and U. S. is not that market overall.

Q Well, was your testimony to the effect that banks as large as these defendants are still under some pressure. to merge—

A Yes.

Q —because of the Hartford banks?

A Yes.

Q And would this pressure also affect other large banks [1106] in the State of Connecticut among the top ten?

A I would anticipate that there might be such pressure.

Q And would you include the Colonial Bank?

A Yes.

Q And Second New Haven?

A Yes.

A And State National?

A Yes.

Q And City?

A City.

Q First Connecticut?

A First Connecticut, Putnam.

Q Now, if the Court did permit this merger, it would create one more very large bank in the State—

A Yes.

Q —correct? Would't you expect that this would increase the pressure on all the other banks now to merge in order to keep pace?

A It might, but as I understand it, each bank would have to go through exactly the same procedure, and it would be subject to administrative review as well as legal review.

Q But you would expect that this merger would increase the pressure on other banks to merge?

A I would do what some people call make both a forward [1107] and a backward linkage, I would say

that this merger came about because of pressure from above and there would be pressure down the line.

Q And it would intensify the pressure down the line?

A My guess would be that the pressure is there without it having to be intensified. The real question is: who is going to do it.

Q So I take it, then, that you are projecting a trend of increasing mergers in this State, assuming that the courts and the regulatory authorities permit it?

A All I have to do is take a look at the Connecticut history and say what went on will continue in the absence of any restriction upon it, because Connecticut has been quite active in mergers in the post-war period, indeed, the merger movement has slowed down somewhat.

Q So are you predicting, then, a trend of mergers in the future in Connecticut among large banks?

A If by trend you mean, will there be more than there have been, will it be the same as it has been in the past, I would say that no, there will be further mergers, I would not want to say the word "trend", I would have supposed that much of the merger activity had taken place, but let me asmend this to point out that we have not seen an active use of the holding company route, and that if that [1108] were used, I would expect some acquisitions along that route at a faster rate.

Q And the holding company route would facilitate combining banks, in your opinion, is that correct?

A It is the one which is used most widely outside of Connecticut.

Q Are you thinking of any particular state?

A Oh, only have to go next door to New York State.

Q New York State uses it? Are you aware of its use in Florida?

A Yes, it is used in Florida.

Q In fact, in Florida, isn't it used to evade the unit banking laws there?

A Well, "evade" is a word that implies—

THE COURT: Avoid is a little better.

A Avoid, or to make possible, to make possible the extension of banking facilities of a metropolitan character throughout the State. It is also used in Ohio where

quite an extensive bank merger movement is going on, and it is now becoming possible in Michigan.

Q Virginia?

A Virginia is an interesting example, and, of course, New Jersey, where the banking districts were changed and we have seen quite a movement. Indeed, one has to ask when one [1109] looks at what's been happening, all one has to do is open the—every issue of the Federal Reserve Bulletin and look at the legal notices section to see the increasing size of that, and there are very few Connecticut banks in that listing.

But as I noticed the listing, I have to conclude that somewhere across the country someone doesn't seem to care how much of this is taking place.

Q Will you conclude from this great holding company activity you have cited that it is one of the means which bankers have to readily expand in the operations throughout the state?

A Correct. I do not know why it has not taken place in Connecticut, and for myself, I think I would prefer not —I would not prefer that holding company route, but that's a preference and it is not based upon any scientific judgment.

Q Have you noticed increasing holding company activity or indications of activity in the State of Connecticut in the last few years?

A About the size of man's hand. The second potential—I think it is, in fact, a multiple bank—no, it isn't yet, the second potential holding company appeared early this year.

Q Who established that company?

A As I remember, isn't this Norther New England National or Northern National out of Windsor Bank—out of Windsor, [1110] or Windsor Locks? The first—of course, the only actual existing one is United Bank and Trust Company, Simsbury, and New Haven Bank—New Britain Bank and Trust.

Q And are you aware that one of the Hartford banks is also establishing a holding company?

A Well, if you mean are there—I'm told United Bank was a Hartford bank.

Q A multiple holding company?

A You didn't mean, of course, Unit Bank—Unit Holding Company—Unit Holding Bank Companies, those, of course, are quite common, United Bank Holding Company, but, to my knowledge, only one multiple banking—multiple bank holding company exists, there is another which is discussing some acquisitions.

Q Based upon the holding company activity throughout the country, would you conclude that it is not a very great obstacle for a banker to overcome if he wants to expand?

A I would think not.

Q Do you see any advantages in using the holding company route?

A I really don't. I look upon it—I think by and large it is used because—if we call a spade a spade, it was the only route available, I notice that this very rapid growth—development in Massachusetts, just in the past six [1111] months, where, as you know, banks were not permitted to move across county lines, suddenly you see now the development of four new holding companies, and connecting medium sized banks across the street, now that was because they couldn't get out of their counties.

Q This was a recent development?

A This spread of holding companies is a development of the past six months.

Q And before then there was very little in the way of activity?

A There were two large—Shawmut Associates and Bay State Corporation.

Q And had those companies used the device to evade the—

A Yes.

Q —or avoid the laws?

A To make possible—

Q Okay.

A —across county lines metropolitan banking services.

Q And then suddenly several other banks got the idea and did the same thing?

A Yes, a very alert bank—South Shore National Bank

began this trend. Incidentally, the State of Maine has seen the same kind of movement at an extremely rapid rate, and that rate continues in the State of Maine.

[1112] Q And does this holding company device sometimes make it easier to make acquisition of banks which want to restain their individual identity?

A I'd have to give a putative answer, a guess at it, I'd have to say: yes. I think there were other reasons, though. Rather than simply retaining title, retention of the title of the bank.

Q Do you know of any other reasons or benefits of the holding company form?

A Well, there are means by which where—I'm sure there are financial arrangements which may be more attractive under this than under some alternative route. And sometimes it's easier to distribute titles that way, which is always an issue.

THE COURT: When you say "alternative routes", what else is there? Mergers and de novo branching?

THE WITNESS: Mergers and de novo branching are —since the demise of the very interesting attemp in Michigan of the partnership banking arrangement. I guess that was not an alternative.

THE COURT: Do I understand that you think bank holding companies might even have financial advantages to the bank who follow that route?

THE WITNESS: There might be. I would hesitate [1113] to say. There have been some looking at this, and as I read the literature—the literature doesn't come out on either side as to which is the best from a financial point of view or, indeed, from any point of view.

Typically, holding company action has taken place where there really wasn't an alternative it is the most frequent—when you see it take place as it is in New York State, or as it is in Massachusetts or it was in Maine, or as it is in Florida, is because there wasn't an alternative.

Here in Connecticut there is an alternative, and I notice under those conditions—and I don't know the reasons why we don't see much holding company activity. On that reading alone, I might conclude, your Honor, that

perhaps it was an advantage here in this State to the merger route.

THE COURT: Why? Just because that's the route the followed?

THE WITNESS: Well, I would assume—you see, a —a decision to expand is a major capital decision, an enormous amount of investment, one has to consider when one makes this, the payout, how quickly would it payout, what rate will it pay out. Now, [1114] in terms of the cost, I think I could build a case that would demonstrate that the merger route was less expensive. Although, someone might build an opposite case; as between the two, I would think that the payout and the rate of return, virtually—saying—in some sense saying the same thing—would be quicker and higher under the merger route.

THE COURT: How about competitive effects?

THE WITNESS Well, the weight—although this is not fair, let's see—it depends upon what you choose to use as the measure of your concentration ratio, I notice that the government chose to count First Connecticut Bank Corporation as a unit, if you do that, then the differences in the competitive effects as between the two would be minimal. If you persist in regarding them as separate banks and accounting—for example, United Bank and Simsbury Bank and New Britian as separate organizations, you would argue that the merger route has a stronger anticompetitive factor in that sense than the holding company route.

But, see—

THE COURT: Let me ask you this: under this holding company route, if all the technical provisions are [1115] compiled with, it is holding company subject to the Clayton Act restrictions? To your knowledge?

THE WITNESS: I'm not a lawyer, but I think the answer to that would have to be: yes.

MR. BENTKOVER: It is, your Honor.

THE COURT: In other words, the government can come in and—

MR. REYCRAFT: It is, your Honor.

THE COURT: —and, in effect—let me put it in a nutshell. The government could come in and say "Don't

merge because there's an alternative route by holding company." So if you said, "Okay, we will get the holding company"—

MR. REYCRAFT: They can't go that way, either.

THE COURT: I thought Connecticut had a law that permitted holding companies, but that is subject to other federal laws.

MR. REYCRAFT: Well, the Connecticut law, your Honor, permits, enables corporations to form holding companies, in fact, we discussed this the other day and there has never been—and my colleagues can confirm this—any prohibition against the general busines corporation acquiring the stock of a bank which makes it a bank holding company. The [1116] legislation which was passed recently—I think it was 1970—facilitated the elimination of minority stockholders, but did not contain any exemption from the antitrust laws, of course, so that—in fact, even approval by the Federal Reserve Board of a bank holding company acquisition does not give any exemption from the antitrust laws any more than a merger approval would.

THE COURT: So there is this possibility—and I will use the word "possibility"—at the least, if you want the alternative route that the government keeps throwing into this case, you may be faced with the very same restrictions or actions by the Department of Justice that you are faced with in this lawsuit, is that correct?

MR. REYCRAFT: Yes, sir, but to be fair about it, your Honor, I would have to say that—that I don't know of any occasion on which the Department of Justice has filed suit on a holding company acquisition of a newly chartered bank. Now, that hasn't happened in Connecticut, as we pointed out, but it has happened in some other states. So that tech—technically, however, that kind of an acquisition is within the—within the Clayton Act [1117] and could, indeed, be attacked if it had the necessary adverse effect.

THE COURT: Well, I understand there's quite a few differences between the two, one is really only a toehold position, whereas by merger you can go in pretty strong into the area.

MR. REYCRAFT: Yes, sir. Although a holding company acquisition can be a pretty good sized one as well.

THE COURT: How could you do that?

MR. REYCRAFT: Well, theoretically, it would be legally possible to form a holding company in the State of Connecticut and have it acquire two banks without regard to the size, as far as the corporate law is concerned, and then the same antitrust prohibitions would apply as if it were a merger.

THE COURT: Oh. Well, you see, I'll have to reread the transcript on how this Holding Company Act works, because I got the impression the Holding Company Act works generally with bank A being a rather larger bank, going around getting toehold acquisitions by purchase of 25% of smaller banks, like maybe the North Branford, the Hamden, the Woodbridge, rather than somehow joining in with the Hartford National.

[1118] MR. REYCRAFT: Well, when my—my friends over here talk about a toehold acquisition, I understand them to be—to mean that that is the acquisition—probably a hudred percent of a small bank in another area, rather than 24% or 10%, I don't think that that's what they mean by that, I think they mean by toehold going into a new area via a small acquisition, and they've also suggested that it could be done by forming a newly chartered bank acquiring that bank, but all of these thinks are subject to the Clayton Act and is a question of degree, if any, of the effect on competition.

THE COURT: Just it occurs to me, and without any thinking behind it, I will just ask this: you mean the directors of CNB, for example, could get together and say, "Well, gee, we can't get into New Haven at all, because it's closed, so six of us will start a bank, newly chartered bank in New Haven, open up with the idea that as soon as we do, we'll merge with CNB or have CNB buy us out and we will get around the closed town thing"?

[1119] MR. REYCRAFT: That is what I understand my friend to be suggesting, but one of the problems, one of the many problems—

THE COURT: There is a little bit of collusion there, isn't there?

MR. REYCRAFT: One of the many problems is that on an application for a newly chartered bank in the State of Connecticut you have to say that you do not intend to sell it within five years or merger it within five years.

Another problem is that—in fact, I have just been handed Exhibit D-7, Connecticut State banking form, and it says, "This proposed bank is not to be organized for the purpose of selling to, merging or consolidating with any state bank and trust company or national bank now in existence."

THE COURT: I did not know about that, but that makes more sense to me.

MR. REYCRAFT: And then there is one more point—and then I will stop—and that is that there is at least legal risk that other banks in the area—for example, New Haven—would like the position that this is an evasion of the State [1120] Home Office Protection Law and would accuse us of violating branching law in the State of Connecticut.

That has not been litigated here so we do not know what the answer to that is.

MR. BENTKOVER: In fact, when a holding company normally establishes a new bank, it does not use this straw man route which Mr. Reycraft suggested.

Usually, for example, in Florida, the bank will own outright the shares of the new bank from the very beginning. However, it will give one share to perhaps eight or nine people who will be known as incorporators or directors, but they will not own the bank, and then transfer it to the holding company. The bank would own it from the very beginning—rather, the holding company would own the bank. So that there would be no transfer or sale such as Mr. Reycraft has suggested. It is forbidden by the Connecticut Bank Department.

MR. REYCRAFT: I just do not agree with that. I think that language in the Connecticut application would catch you.

If Connecticut National Bank people said, you know,

we'll give qualifying shares to some people [1121] but we'll have 99-pound-X percent of it," I do not think anybody could sign that statement to the Connecticut Banking Department.

MR. BENTKOVER: That restriction or that clause in the application is not pursuant to any Connecticut law. There is no law which states that.

MR. REYCRAFT: All the State Superintendent has to do is say no.

THE COURT: I will hear you out at the proper time. I was just curious as to whether there was a Congressional intent, as is evident behind the Clayton Act, if there was similar type of intent when it passed the Holding Act.

MR. REYCRAFT: These acquisitions are fully subject to the Clayton Act.

THE COURT: Congress did not specifically state anywhere, when it passed the Act, that it would not be subject to the Clayton Act.

MR. REYCRAFT: No, sir.

THE COURT: Therefore, that would give me an insight as to the Congressional intent when the Holding Act was passed.

MR. REYCRAFT: There is no exemption, your [1122] Honor.

My friends here, my colleagues, have brought a number of cases involving holding company acquisitions.

THE COURT: All right.

It looks like you are going to have to come back tomorrow, Doctor.

I assume you are going to have some redirect?

MR. REYCRAFT: Yes, sir, I will, fifteen minutes.

THE COURT: If it is a matter of five or ten minutes, fifteen minutes, I will stay.

MR. BENTKOVER: I will have a good deal more than that.

THE COURT: We might as well wait until tomorrow, until ten-thirty.

Have a good evening.

(Whereupon, the Court was adjourned at 4:10 o'clock p.m.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 14,583

UNITED STATES OF AMERICA, PLAINTIFF

vs.

THE CONNECTICUT NATIONAL BANK and THE FIRST NEW HAVEN NATIONAL BANK, DEFENDANTS

and

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, INTERVENOR

United States Court House
915 Lafayette Boulevard
Bridgeport, Connecticut
October 27, 1972

Before:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

[1124] Appearances:

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[1125] THE COURT: Are the parties ready to proceed?

MR. CLARK: Yes, your Honor.

Your Honor, at the close of the day yesterday, I think there may have been some confusion about the holding company device, what it is, and perhaps about the government's position on this issue. If I may, I'd like to clarify that.

THE COURT: By all means.

MR. CLARK: As was brought out yesterday, the Holding Company Act is subject to the antitrust laws to the same extent that mergers are, so we are not contending that merely because something could have been accomplished by a holding company acquisition—we are not contending that merely because a consolidation or merger could have been accomplished through a holding company that that would have a different effect legally, and, in fact, this consolidation could have been accomplished by a holding company device, it would have been possible to form a holding company that would have had acquired a stock of both of these banks, and I am sure the government would not have had a different reaction to it.

Our contention, however, is that this is a device which can be used in Connecticut and is used [1126] in other states quite commonly to avoid, if that's the word, restrictive branching laws, and in Connecticut it would be possible through the holding company device to enter de novo into a town which is otherwise closed to de novo branching, or it would be possible by means of a holding company to make whole acquisitions, acquisitions of small banks, which would nevertheless extend the resources of the acquiring bank, the holding company, to this small acquisition, so I think, your Honor, that this is a matter of form more than substance.

But it is this form of expansion which has been held in many other states with laws similar to this to be a possible—and to open up areas which are otherwise closed to branching.

THE COURT: Now, if a holding company had been formed and CNB and First New Haven were the principal banks involved, the net effect of this route of merger would have probably been the same, would it not?

MR. CLARK: Yes, sir.

THE COURT: In other words, all the branches of one bank go into the pot, all the branches of the other bank go into the pot.

[1127] MR. CLARK: Well—pardon me.

THE COURT: And the corporate structure would probably be the same, management structure would probably be the same, and if this merger before me would have anticompetitive effects, it is probably likely that the holding company route, if it were challenged, would probably have anticompetitive effects, is that about it?

MR. CLARK: That's correct, your Honor, assuming that the same banks were involved.

THE COURT: Yes.

MR. CLARK: So I think the crucial factor is what banks are involved in this—in this form of expansion rather than the form of expansion itself.

THE COURT: All right. So, you are also saying, I suppose, if CNB wants to go into Hartford or New Haven, they can probably take the route of a holding company, but not necessarily join in or acquire First

New Haven, that there's the Woodbridge Bank and there's North Branford, I don't know, maybe others.

MR. CLARK: Hamden, yes.

THE COURT: Hamden, right.

MR. CLARK: Yes, sir.

[1128] THE COURT: And they can do that, however, by merger, can they not?

MR. CLARK: Yes, sir.

THE COURT: I mean if the agreements had been reached, CNB and Hamden could merge?

MR. CLARK: That's right.

THE COURT: Or another route would be the holding company—

MR. CLARK: That's right.

THE COURT: —is that correct?

MR. CLARK: And the holding company could be used to acquire any of these banks, or it could also be used to expand de novo, to establish a new bank either in New Haven or elsewhere and acquire that—

THE COURT: How does that work in practice? Say CNB said, "We're going the holding company route, and we want to open up in New Haven. Now, there are certain problems. We have the home office law that we have to contend with, we also have pretty strong banks in New Haven, so if we're going to compete, we have to at least put in a branch or a building somewhere in and around the areas we think are condusive to competing with these new Haven banks and get business." And if the executive officer of CNB [1129] said to counsel, "How do we dot it?" As a practical matter, what happens? What would his answer be?

MR. CLARK: Well, I'm not fully familiar with the exact procedure, but essentially it is this: To apply for and form a new bank, it is actually a bank, not a branch, but it is a separate bank, which would have its headquarters in this town, so you see, it is not a branch and, therefore, not prohibited by the home office protection law which applies only to branches and not to banks.

THE COURT: Well, who would be the backer? Could CNB be the backer?

MR. CLARK: Yes.

THE COURT: And could the President of CNB be the president of the new bank?

MR. CLARK: I think he could, yes, sir.

THE COURT: And the same board of directors?

MR. CLARK: In any event, there would be—there would be commonality in terms of the board of directors of the new bank, they may well be members of the board of the—of CNB or officers of CNB, this is quite common, and this is the way it's done many, many times in other states where there's restrictive branching laws. In some states branching is not [1130] permitted at all, banks may not operate any branches, but, in fact, banks expand de novo via the holding company route by forming new banks rather than branches, and then controlling these banks through the holding company, and as has been brought out, it is quite common in Florida, and it is becoming more common in other states.

Now—where there are restriction branches in one form or another.

THE COURT: Did I get the impression yesterday from what someone said that if the officers of CNB and the directors and executive people got together and said, "Look, let's put a new bank in New Haven, Connecticut, on its face it would be an arm's length new bank, and we would back it with CNB money and within two years we'll sell out to CNB." Somebody stood up and said, "Oh, no, you can't do that, that's just what some law is designed to prevent, because this would get around the home office protection, and it would form a collusion."

But the holding company route is an exception to that, I take it?

MR. CLARK: Yes, sir, it is done all the time in other states. There's simply no distinction [1131] between the laws in these other states and the laws in Connecticut.

I don't think, your Honor, that there's anything collusive about it, or that there's any subterfuge at all involved. Where it is done, it is done openly, and it is done with all parties involved—are fully aware of it—

of what's going on, that this is a form of de novo expansion by another bank.

So it isn't a matter of not telling anybody or keeping it secret, and although it has not been done in Connecticut, we think that there's no reason why it cannot be done and, in fact, we think it likely that it would be done.

THE COURT: Well, I don't think the—and I don't pretend to have the mind of—or the logic of an antitrust specialist—but it seems to me if the home office protection law is designed to prevent de novo branching where there's a home office and somebody comes along with the idea of not calling it a de novo branch, but a new bank, and it is the same building, the same backers, the same management with an agreement that big brother will pick up the tab through a system of loans for two years and then sell out to the top bank, the big bank, that's getting [1132] around what the State of Connecticut just doesn't want to happen.

MR. CLARK: I would make two points, your Honor.

First of all, there is no sale as such, right from the beginning this parent bank, the father bank controls this bank, right from the start.

And secondly, your Honor, we will produce—there have been holdings in many other states with laws almost exactly like Connecticut's, home office protection laws, this is true in New York, true in New Jersey, there are states, as I mentioned, in Florida, a bank may not operate a branch.

Now, even though that's not the same as Connecticut, it seems to me that this again implies: well, banks should not branch, and, yet, banks have expanded de novo through this other form, and we will certainly, your Honor—one of our exhibits already shows that in these states there are laws comparable to Connecticut's and that such—and that this form of expansion has been permitted, and the Board of Governors of the Federal Reserve System, which must approve all such acquisitions by holding companies, has specifically held that home office [1133] protection does not prevent expansion by way of holding company through new banks.

THE COURT: I understand that. I mean I understand the law, and, of course, the other difference would be that if you expand through the holding company, it is just a matter of economics that a bank can probably at the very most go in maybe with one or two banks, because of the tremendous cost, but if they merge, they pick up the home office of the bank that's in the city, plus maybe 10, 20 branches all at one clip. Whereas if they use the holding company route, they probably would exhaust all their finances if they tried to open up more than one or two.

For example, CNB wants to get into the New Haven market, if it merges with First New Haven, it's in pretty strong.

MR. CLARK: It's in as strong as it can get, your Honor.

THE COURT: Whereas, if they go through the holding company, they do get a branch, but they probably couldn't get one on Church Street, they'd have to spend an awful lot of money to even get one branch or one new office, and so I understand all [1134] that, and I can see where the government perhaps would not take too stringent a position if they learned that CNB was opening up a new bank in New Haven through a holding company route. In fact, it might be procompetitive, certainly?

MR. CLARK: Yes, sir.

THE COURT: Whereas, when it starts to merge with one of the biggest banks in New Haven, different considerations come in. I understand all that. But I was just wondering about the way the holding company works in practice, not only in theory. Because one expert has said, as you know, "I think it is a relatively easy thing to do, no reason why banks can't do it."

The president of the bank got on the stand and said, "My goodness, we looked into it and it would cost millions to open up four branches or four new buildings," and that led me to believe that there were many other practical matters that had to be considered, and that the merger was the best route.

MR. CLARK: Well, your Honor, I think from the

defendants' standpoint it probably is, this is their first choice and they've made that selection.

But it is the government's contention that their [1135] first choice is not the only choice. We contend that there are alternative means of expansion, several alternatives, not only just holding company, and that this is the most anticompetitive means which they could have chosen, and that in—while holding companies may be less attractive, they are nevertheless a possibility, they are used by other banks in other states all the time, by banks that are much smaller than these banks; by the way, these banks have expanded de novo, we view the holding company expansion de novo just simply a form of expansion, and both banks have been very active in that form of expansion.

MR. REYCRAFT: Your Honor, as I mentioned yesterday, the State Superintendent of Banking in Connecticut requires that people who apply for a new bank charter sign a statement, sign an application in which they say that they do not intend to merge or sell the bank that is being chartered to anybody else for a period of five years, so that to do what Mr. Clark says we should do, well, from his standpoint he might like that, it would be a false statement to the State Superintendent of Banking, and if it was done, if the false statement was made and the attempt was made thereafter to have CNB, for example, [1136] acquire that bank, we would have more troubles than we would need with the state banking authority.

There is also the question, as your Honor pointed out, as to whether this is, in fact, a means of avoiding the home office protection, and, of course, it is, it is a way of—if it works—of avoiding home office protection. This has been litigated, and we'll submit a memorandum on this subject, in the Fifth and Seventh Circuits, this form of expansion has been held to violate the home office protection laws of certain states; there are other circuits which have said it does not violate the home office protection law, so there is a split in the circuits, so that what Mr. Clark is asking us to do would first require that some people make false statements to the state su-

perintendent, if it's a state charter application. As far as the national bank charter which the comptroller has to furnish, the regional controller will be a witness in this case and will speak for himself as to what standards he applies and whether he would or would not issue a charter under those circumstances.

But at the least, it seemed to us—it seems to us highly probable that if the State Superintendent [1137] changed his position on chartering new banks, which we see no sign of, or if the Comptroller of the Currency issued a national bank charter, we would still face the possibility of litigation by banks with head offices in New Haven, business in an area and consider that as a factor in protection laws.

Now, how that litigation would come out, I frankly do not know, but there has been such litigation that has gone both ways, so that's the route that Mr. Clark is suggesting we follow.

But I'm really not prepared to go into the details of the Circuit Court's opinion, but I would like to submit a memorandum on that subject.

THE COURT: Well, in any event, however, Mr. Clark has implied that if you—your two banks were going the holding company route, you would probably be right here before me, anyway.

MR. REYCRAFT: Oh, yes, that's—

THE COURT: And your best thinking is that you want these two banks to get together, it is just not going into one market, as President Hawley mentioned on the stand. It is a factor that I may feel that is really not relevant because it doesn't accomplish what the defendants want to do. It would be subject to [1138] the same objections the government has in this case.

MR. REYCRAFT: Well, we had formed a holding company and acquired—and that that holding company attempted to acquire CNB and First New Haven, we'd be right here with Mr. Clark, no doubt about that.

THE COURT: But the holding company answer is an avenue that Mr. Clark is advancing towards some of the claims of the defendants. I now have straight in my mind that it is addressed to some of the claims.

It certainly wouldn't, you agree, Mr. Clark, give CNB statewide banking overnight, I mean, as a practical matter, they have no way of getting that money?

MR. CLARK: Not overnight.

THE COURT: Whereas a merger, so to speak, overnight does give them this conglomerate power?

MR. CLARK: They have more money, your Honor, and, of course, they have already by this merger expanded their geographic base simply because here are two large banks already in New Haven and Bridgeport, so to that extent they're ahead of the game, but they have combined two of the ten largest banks in the State, two of the ten banks in the State that [1139] have accounted for 80 to 90% of all geographic expansion in this State, they have eliminated one of the most aggressive and—

THE COURT: Well, I'll hear you fully on these arguments. The point that's being made, though, is that if CNB wanted to become a statewide bank and take on, so to speak, the two Hartford banks, that it probably could do so with the holding company route over a long period of years by putting up one new bank in New Haven and maybe one halfway between New Haven and New London, maybe one in Waterbury, but the amounts of money would necessarily require that this be a long-range program.

MR. CLARK: I would classify it, your Honor, as longer range, I don't think that this is something which would take 50 years. It would take them longer, I don't have any question—they could also expand, of course, through smaller mergers, just as the Connecticut banks have done—as the Hartford banks have done. Now, their statewide expansion, your Honor, has been accomplished both—really, in two ways, small mergers and de novo. At least the expansion in New York and Bridgeport has been done in that way. And those are—those two [1140] means are also available to these defendants and we contend that they could—they could do so equally as well if perhaps taking more time than it would take if they were able to merge here.

THE COURT: Yes, I understand, and I will hear

you fully on this later on when we can first establish some principles and then see what the underlying facts are with respect to those principles.

All right. Now, we left off yesterday with cross examination.

[1141] CHARLES J. STOKES, having been previously duly sworn, resumed and testified further as follows:

CROSS EXAMINATION CONTINUED

BY MR. BENTKOVER:

Q Doctor Stokes, yesterday you discussed the question or the issue that sometimes a bank may have some business in an area and consider that as a factor in establishing a new banking office in that area?

A I did.

Q Do you know what the practice is when that banking office, if it's finally established, whether the home office would then transfer the deposits in that area into the new banking office which is established?

A Under the regulations or the administrative regulation of the Commissioner here in the State of Connecticut, that decision must be announced before the branch is to be established, in other words, the statement requires the bank to say whether or not it is going to transfer business in that area to the branch, whether the branch will create its own new business from that stage forward.

I don't suppose that would prevent, however, some forms of transfer after the branch was established.

Q Do you know, though, whether it is normally done to transfer—

[1142] A I would suppose it was normally done. I do not know what the actual practice is.

Q Do you know whether if, say, bank A acquires smaller bank B in another area, whether bank A would also transfer its business which it holds in the area of the acquired bank into that bank?

A I would expect that would be the case. I do not know that to be the case.

Q Do you recall that yesterday you discussed the situation which is going on in New York with banks expanding—

A I did.

Q —into statewide networks? And you discussed the law of New York, are you also familiar with the practice of the New York Banking Department in permitting banks to go statewide?

A In general. I have not looked at it in detail recently, I have some general idea of what the provisions are of this new law, of what has been happening.

Q And are you aware that the New York State Banking Department has denied acquisitions by large statewide banks of leading local banks in local markets?

A Well, I suppose it has taken place, but as one looks at the record, one wonders whether that is, in fact, the case, I don't think that there's left in Syracuse or in Rochester— [1143] for example, or Utica, very many local banks that don't have a New York connection, some city connection of some sort. It is entirely possible what you say is correct in the specific instance, but it is certainly my impression that this doesn't describe the overall trend in New York State.

Q Will you turn to Exhibits 11, 12 and 13?

A Certainly.

Q That's D-11—these are the series of exhibits in which you projected a trend line—

A Yes.

Q —for the large Hartford banks and the next six large banks—

A Yes.

Q —in the state? Now, I'm not sure I understand the way that these exhibits tie together, so first, would you tell me whether I'm correct that Exhibit D-11, which is the chart, is that really plotting of the percentages which you have on Exhibit D-13?

A It is.

Q So that was just a mechanical procedure and nothing was done to the percentages?

A It's illustrative, or it's—yes, it's simply designed to present in graphical form what appears in D-13.

Q And then the percentages and D-13—are they derived [1144] from the figures which are on D-12?

A Yes, they are, that is to say: with respect to the observed figures through 1970.

Q Yes. So, then, through 1970 on D-12, if I wanted to obtain a percentage in D-13, in say, the first column for the largest two banks, would I merely divide the figure, the dollar figure for the largest two banks on D-12?

A If my mathematics are correct, that's what we would have done.

Q By the total dollar figure?

A That's right.

Q For the total deposits?

A That's correct.

Q For the state?

A That's correct.

Q Also on D-12?

A That's correct.

Q And this is just a mechanical device?

A That's correct.

Q So I guess D-12 is the basis for your projections which are placed on D-13?

A Correct.

Q And the figures on D-12 going through the year 1970 are actual figures?

[1145] A Correct.

Q And beyond that date they're your projections?

A They are projections.

Q For each of the columns on D-12 going into 1972 and beyond, are those projections?

A Yes.

Q Now, for a total commercial bank deposits you made a projection through 19—from '72 through '82?

A That's right.

Q And did you make a separate projection for the next column for the deposits of the two Hartford banks?

A I think the—do you want me to explain the method?

Q Well, first, are these separate projections?

A They are separate, but they're also related since they're necessarily part of the entire picture.

Q Could you first explain how you did project total commercial bank deposits?

A Well, in a sense, I did two things—in fact, I did two things—I tried through the method of link relatives which determines the percentage increase from year to year, and over the relevant figures, what was the rate of change. I then averaged that rate of change, that is: link relatives, I used on a weighted average—weighted base and obtained the rate of change.

Q When you say "weighted" I take it that means you give some emphasis to one figure, more emphasis to one figure than to another figure?

A Well, each figure, each rate of change, of course, if I were to average them without taking into account the actual amounts, I might get some distortion, so I have attempted through weighted averages to get minimum distortion.

Q When you say that you have weighted them, now, does that mean some of these numbers are given more weight than other numbers and that some percentages were given more weight than other percentages?

A Yes. That's what weighted average means.

Q Well, could you explain, then, specifically which percentages in the series were given most weight and which were given least weight?

A Well, suppose—suppose we give this in some detail. Let's take the first column. Here we're dealing with a percentage change from '59 to '64, for example—

Q Do you have what that percentage change is available?

A I don't have it right in front of me, no. But whatever it was, would have been read—in other words, the way I would have done this is the following:

I would have divided 3178.7 by 2344.8, and I would have gotten what is called a link relative, one hundred zero, [1147] probably thirty-five, thirty-six in this case, in that vicinity over—I have forgotten the price figure, and each successive year, I would have taken, for ex-

ample, the 3707.5 and divided by 3170.87, and would have gotten that relative.

Now, you will notice that, of course, '59 to '64 is five years, and '65 to '66 is two years, so I have two choices here. I can take that rate of change. You see, what I have got, in other words, if a five-year change from '54 to '69—'59 to '64, two-year change—a two-year change and a two-year change—now, I can either divide through the link relatives—incidentally, once I have gotten this rate of change, I drop the first two, I say it's a hundred and nine or a hundred and sixteen, that's over—so, in order to make sure I add up proper things, I drop the one hundred and I am left then with the percentage change which in this case—say, would be 9.1.

Now, 9.1 defines two years, I multiply it times two and the period times—if there were five years, times five, so the weight is according to the number of years.

Now, that gives me, then, in this case, I think, five, seven, nine, eleven years, so, then, I add them up and divide by eleven.

Q So that if I followed, then, your system of weighting [1148] is designed in order to give the same emphasis to each year from 1959 through '64 as you give for each other two-year period?

A That's correct.

Q So that after you have weighted them, every year from '59 through '70 is given the same weight?

A Correct.

Q And is there any other weighting involved in this? And did you use the same weighing method for the next two columns?

A Yes. Now, let me make clear that—as I said, with respect to the first figure, I left—I made that observation, but then held it in abeyance, because that total deposit, after all, is not an independent figure, it is, after all, the result of the components of it, so I got that observation and saw what that would lead me to, saw that would give me one reading, then I wanted to see what the favor of the Hartford banks and the next six banks under a variety of approaches—so that, in effect, column A is the basic column.

Q Column A is for total commercial bank deposits?

A No, total deposits, next six banks.

Q And these are actual figures which you obtained from Polks Bank Directory?

A Polks, and as you are aware, there's some problem here which figures are entirely correct, but we use Polks, used the Bank Commissioner's reports, we checked them against the [1149] Comptroller's figures and we went to the FDIC figures. In most cases, they tended to agree.

Q Now let's go back to the column total bank deposits. You explained how you got these link relatives, which are percentage increases from one year to the next period?

A Correct.

Q What do you do with those?

A Well, if I have averaged them in the method I have described, I now have an annual growth rate over the eleven-year period.

Q How did you average those?

A Well, you see, if I had—suppose I'd taken the link relatives for each of these years, multiplied it times five for the first five, by two for the next two, et cetera, I now have—may I remind you that I've dropped off one hundred—may I demonstrate this on the board, this would be easier, perhaps, to see?

THE COURT: Would you like him to do that?

MR. BENTKOVER: I can follow this way. I'm not sure how it will get in the record.

THE COURT: All right.

MR. BENTKOVER: It's all right if it's more convenient.

A Well, what I did, then, was to—since I remind [1150] myself that 100, of course, is simply the base, so I then, as I said, obtain the percentage rate. So instead of reading it a hundred and nine, a hundred and thirty-six, I read as 9.1 or 36.7 or 10. this or that. That then will be, since they are implicitly weighted, I add up that total, divide by 11, and I have now got the average weight—pardon me—the average rate of growth, and I have forgotten the figure here, but it would have

been somewhere between 7, 8 or 9%—somewhere in that vicinity—which is an annual rate of growth.

Q Is there any difference between doing it that way and merely substracting the figure 1959 from 1970 and using compound methods to figure what the average rate of growth would be?

A Yes, you would get a different answer, I would think and I would think that was a rather sloppy method.

Q What's your reason?

A Well, I wanted to take into account what actually happened in each of these periods.

Q And through your method you do give equal weight, then, to every year?

A Yes.

Q Okay. And did you use this same method for the next column for total deposits for the two Hartford banks?

A I did.

[1151] Q And the next column for the next six banks?

A Oh, yes, yes, in terms of rates of growth for each of the columns, '59 through '70, I determined what the link relatives were, I worked out the rate of growth for each.

Q Now, if two banks merge during the period of time you have plotted the actual data, it would not change the first column, would it, for total commercial bank deposits?

A It would not change the first column, correct.

Q The second column for total deposits of the two Hartford banks would be affected if the Hartford banks did make an acquisition?

A To the extent to which they made acquisition, their figures would be affected.

Q So that for the two Hartford banks, if they make an acquisition and, therefore, increase their deposits by the amount of the acquisition, it would be reflected in the actual rates of change through 1970?

A Correct. Correct. And the same would be true for each of the other columns.

Q Yes. What's your reason for including acquisitions in this column as a basis for figuring rates of change?

A Well, all I did was to include what was, in fact—you see, what I'm doing—see, I'm not quite sure I understand your answer, in—in fact, I took the figures from the sources [1152] I have described, those sources would have included the acquisition, in other words, what we have for each year is the reported deposits of that bank, and if that bank during that year had an acquisition, then its end of the year figures would reflect that acquisition.

I did not go back and take it out of those figures and say: well, now, City National would have been City Trust, so let me subtract that portion which was observed from Waterbury. I didn't do that. I took them as they appeared in the record.

Q So, then, it was your intention to include increases in bank deposits whether it stemmed from growth internally within the bank or whether it stemmed from growth by competition?

A It was my intention to reflect the changing situation as it was, in fact, taking place.

Q And you did that for columns A and B?

A I did that for columns—for all the columns in question. Now, B, is, of course, a composed figure. Yes—I'm sorry—B—yes, all of them, all of them.

Q Let's turn to Exhibit D-13 now.

A All right.

Q Column B there.

A Column B, you say?

Q Yes.

[1153] A All right?

Q In your footnote you state it takes account of City Trust, Waterbury National and proposed First New Haven and Connecticut National merger, correct?

A Yes. It does in both D-12 and D-13.

Q In what year are you assuming that the merger of First New Haven and Connecticut National takes place in column B?

A If you look at the bottom of D-12 and see it says: "Takes account of City Trust, Waterbury National merger, 1971 and the proposed New Haven, Connecticut National merger of 1972."

Q So that in column 13 and—that is: on Exhibit D-13, column B—where you show a decrease from 40.5% down to 39.2% as your first projection, does that include an increase—

A Yes.

Q —for this merger?

A Yes, it does.

Q Is it possible that what you have done is go back to 1959 and considered these banks as a unit, assumed they merged then and then projected—

A I don't think so.

Q —internal changes?

A No. The difference between the column A and column B would show that I took into account the merger. It is 35.9 as [1154] against 39.2 in the projected percentages.

Q Let's look at your 1970—the figure 40.5.

A All right.

Q And now let's look at one column over. You have a number 37.0.

A Yes.

Q Doesn't that 3.5% represent the merged bank?

A I have to say that—I don't think it does.

Q I think if you put the numbers together, you'd find it might as—do you know what else would account for this 3.5% difference?

A As I say, I have said there was a merger in that year, the 3.5 difference between B and C.

Q 3.5%, the total state deposits would be over 100 million?

A I'm aware of the question you are asking. In effect, I'm—if I go to page—to the D-12, I'm asked to explain the difference between 1961.7 and 2145.3, that's because, as you pointed out, that's the basic data. And I have put into it—let's see, the—the—Waterbury-City Trust merger would have added some 60 million dollars, which would have got me up to 2100. I'll make a quick calculation.

I have an 84 million dollar difference, so clearly the 84 million dollar difference could not have been accounted for [1155] by this merger.

Q It could have been if it also takes into account other trends in other banks, couldn't it?

A Yes, but I—I—I don't think that was the case. I think what we see here is the effect—

Q Well, pardon me—

A Yeah.

Q The City Trust-Waterbury National merger took place in what year?

A It would have taken place in '72.

Q That's right.

A Yeah.

Q Are you saying, then, that you have included it in the year 1970 as a merged bank?

A Let's see.

Q And that's my point. If you have included that in 1970, I think you have also included this merger.

A No, this merger, I'm sure, is not included.

Q Well, let's account for the 200 million dollars.

A It isn't—you mean as between B—A and B or B and—

Q Yes, it is.

A A and B, it's only 84 million dollars different. Isn't it? Sorry.

[1156] Q No, I think it is almost 200.

A 184 million.

Q Right. I think you have taken these—both of these mergers into acount from the very beginning of this chart, that's the way my figures reconcile.

A With respect to A—

THE COURT: Is there any way, gentlemen, that perhaps a short recess or an agreement—

MR. REYCRAFT: If I may say so, your Honor, we think that the explanation is it is the next six banks and it pulls in another bank from the bottom.

THE WITNESS: Yes, yes.

MR. REYCRAFT: Is that the answer, Doctor?

THE WITNESS: Yes, that's the correct answer, that's correct.

Q By we're talking about the same year, 1970, and in one column it's 37.0 and the next column it's 40.5, there is no change in year, there has just been a change

in some assumption which has been made in this, I don't know what it is.

MR. REYCRAFT: Maybe we should take a recess, your Honor.

THE COURT: Actually, I should know exactly what this chart does represent. Apparently counsel [1157] last night, yesterday, even at first review, noticed an aparent discrepancy between how he averaged the figures and how the witness did. We could be here for a half hour adding and subtracting, and maybe, Mr. Reycraft, you, the witness, counsel can get together and stipulate as to—

MR. REYCRAFT: We'd be glad to try that.

THE COURT: —the basis for that chart. I think in five minutes you could do something that we'd be at here for 20 minutes.

MR. BENTKOVER: I think we could do this at a later time, I could move on to something else.

THE COURT: Fine. Would you do that, then, please?

MR. BENTKOVER: Assuming Doctor Stokes would be available later in case we did want to ask about this.

THE COURT: Go ahead.

THE WITNESS: I wish we wouldn't make that assumption.

MR. BENTKOVER: It may take a good deal of time to pin this down.

THE WITNESS: I did not bring with me my work papers. If I had, I could answer the question very [1158] quickly.

Q So you have the growth rates which you calculated for the two Hartford banks from the period 1959 through 1970?

A Since we're going to answer all of that kind of question, can we postpone that? I'll give you all that information.

Q You don't have those here?

A I have only what—I have only the evidence in front of me, I do not have the work papers.

Q And you wouldn't be able to tell me what the percentage increases for the next six banks were, either?

A I can give you an offhand remembrance, it was somewhere in the vicinity of 8.1, 8.2% for the next six, and it was—

Q I want to year by year changes, rather than—

A Oh, well, then—

Q —the average of those.

A I simply don't have them up here.

Q Okay. Well, then, you have taken some average of those and made a projection into the future?

A Correct.

Q Of a constant rate of change, correct?

A Correct, a constant—constant compound rate of change.

Q But the rate of change is the same every year, isn't it?

[1159] A Yes.

Q For the first column total, commercial bank deposits, what is the percentage increase which you are using for each period into the future?

A What we—let me be a little clear here. What I did was—decided to use some sort of assumption as to what was going to carry these figures forward, so I took column A and column A reflects the position of the next six banks.

Now, over the period from '59 to '70 I found that that column had the—a percentage of the total deposit column indicated by the figures in D-13.

Now, holding that in mind, I then examined the rate of growth of column A, I projected that rate of growth.

Q In which column?

A Column A. That would have been—give me the figures which apear in Column A. By the method I have described I now had the projections for column A.

Q Are these the percentages projections?

A Yes. In other words, whatever those percentages were, once I'd obtained an average percentage rate of growth from '59 through '70, I applied that and the method of application—if we take, for example, 1961.7, that's the figures for the deposits in 1970, multiply that times the link relative, the average link relative, suppose it was a hundred and nine, that would then [1160] give

me the next figure.

The next figure I would multiply that times a hundred and nine, so I'm getting a compound rate.

Q I'm looking at the total total.

A Yes.

Q Did you supply a total percentage?

A I'm building up to that, how that came about .

Q Okay.

A Now, once I have obtained that figure for column A and knowing that there was a relationship between—appeared to be relatively fixed between A and the total deposit column, I then derive the total deposit column from the column A. That's the first step.

Q Wait. Let's stop right there. You mean you did not project what the total deposits in the State would be every year into the future—

A I did—

Q —wait.

A I think the testimony revealed that I did that, I made such a projection. I held that in abeyance, that projection would run away and clearly had to depend upon what the other banks—what the component banks were doing.

Q Then, are you saying you projected what the banks in column A, which are the—

[1161] A Next six banks.

Q Yes—you projected their growth, and from their growth you projected the State's growth?

A I projected a state's—I projected—12, a set of alternatives. Alternative one, let's let the figures in the first column simply project themselves.

Alternative two, let's let the figures of the next six banks project themselves.

Let's—then see what sort of figures those give us to get another reading on this matter.

Then I said: well, suppose we take the Hartford banks and let's take them as a projection, see what they would get, we know that there's going to be some interplay here—and, incidentally, the reason I did that was if you can find these figures exploding away to very large numbers and I had to keep asking myself: what was a reasonable projection, what was the likely pattern, so

in this comparing of alternatives I chose the most conservative alternative in terms of rates of growth of commercial bank deposits.

I could have arrived at a figure of 1982 of 15 to 16 billion dollars, but chose not to do so.

Q And then how did you project the deposits for the Hartford banks? How did you get that percentage increase?

A That percentage increase is—could be derived in [1162] one of two ways, and once, again, I did a comparison. But, actually, what—I'm sorry, what I actually did was to let the Hartford banks stand on their own two feet and pushed them and see what the rate of growth of those two banks would be, but I asked myself: what was that likely to mean in terms of the total, so, see, I had a series of possible views of what that total could be, and I could choose among them.

Q Now, if we look at Exhibit D-13 for the column: largest two banks, am I correct that you now are projecting an increase of 1/10 of 1% in every two-year period—

A Correct.

Q —on into the future?

A Well, certainly through the period observed.

Q So that if we push this another decade or two, eventually you are going to show the Hartford banks as controlling 100% of the deposits in the State, is that correct?

A One should never produce such extrapolation, I covered only the period in consideration.

Q Well, I mean you are taking a constant percentage and pushing it a decade now and—isn't that correct?

A May I correct you? It's not constant percentage, it's a constant point increase, point of percentage.

Q Well, let's look at 1974 compared to '72, that's 9/10 of a percent increase, isn't it? Isn't that 9/10 of a point of [1163] a percent? Pardon me, you see—

A The percentage rate of increase would, in fact, be declining, technically speaking.

Q But the absolute increase stays the same?

A The absolute increase in points of a percentage would be steady.

Q So that you are projecting an increase of point 9/10 of 1% every two years—

A Yes.

Q —on into the future?

A Not ad infinitum, only into 1982.

Q Then, are you projecting a different rate of increase beyond that?

A I was not asked to look beyond 1982.

Q What conditions do you see which will be different in the period 1980 to '82 than from 1974 to 1976?

A Would you repeat that question?

Q What conditions did you foresee in the period 1980 to '82 and would those be any different from the period 1974 to '76?

A '74—I—I assumed, in fact, that the entire period '82—'72 to '82 would be a period of consolidation of whatever had been occurring during the—as the period began. I did not attempt to extend my purview beyond this. I assumed that during this period whatever had been acquired and whatever new [1164] penetrations had been made would be consolidated, and I made no assumptions about any further mergers, I assumed no further merger beyond 1972, I assumed no further penetration beyond 1972, which is scenario which may not be correct. And I said: let's take a look at this period, this consolidation period for 1972, 1982. I did not attempt to go beyond that and one can conceive of a whole set of scenarios which would involve—as you earlier tried to get me to say, in which successive mergers would have taken place, I explicitly left those out of consideration and said: let's just suppose that for the next ten years the scenario simply calls for the Hartford banks to consolidate what they have acquired and for whatever mergers have taken place to settle into place, what will be the situation then.

And then I said: let's ask—take the most conservative view of what the totals might be.

Now, I should indicate that I'm already wrong, the

rates of growth of the banks are faster than what I have been measuring.

Q So you have not looked at each of the periods on into the future and tried to determine what will happen, is that correct? You have just averaged up what happened in the past, plotted it, averaged it and assumed it would go on into the future?

A I didn't—

[1165] Q Is that the way you have done it?

A No, it's not the way I have done it.

Q You—okay.

A I—I see—let me repeat what I have said; in order to make any kind of reasonable projection into the future, I have to have some sort of scenarios as to what's likely to happen in the future, and so for the period specifically under consideration, the next ten years, I excluded from my thinking any possible further mergers, assuming that there were going to be none. I assumed—I made no assumptions about any further penetration by the Hartford banks into new territories. I said: let us see the situation as it is now, as it will have arrived, and there are two situations, were one without the merger, and let's push it ahead and see what it would look like, and under those conditions what is the likely pattern?

I could have assumed that, in fact, this would trigger other mergers, and if I had done so, then my figures would be quite different.

Q So that if you believe that this would trigger other mergers, the percentage increases you have shown on column A would continue increasing—it would not be a constant 35.9% on into the future?

A Yes. That's quite correct. I assumed, incidentally, that—that just as—and this was from evidence I could see [1166] that just as this merger was challenged, each successive merger might well be challenged if it involved large banks, so I had to—I assumed that it would take considerable time to absorb this particular merger.

Q Well, then, I think we're going to have two assumptions in the future, and one, that this merger is not permitted, in which case your assumption that there

would be no other mergers might be valid, if you assumed that this merger is permitted—and I think yesterday you indicated you thought there would be other mergers in that case—then, would you make another assumption in column A that the percentage should increase because of these other mergers?

A Well, first of all, I don't think I did, in fact, express an opinion that there would be other mergers. What I said, I think, was that each successive merger as it appeared would have to go through these administrative procedures. You asked me to express an opinion as to what banks might possibly talk—but my observations even in this courtroom are such that it would—there would be a challenge of any succesive mergers, so to predict mergers requires me to predict the behavior of the courts and of the government, and in that area I plead no expertise at all.

Q Was it your belief that Connecticut would end up with perhaps five statewide banking systems?

[1167] A This is what I would like to see happen.

Q Assuming that it were legal, then, for these two banks to merger and for other banks to merge, of equal size, would you then believe that there would be additional mergers?

A I think you would want me to answer the question as explicitly as possible. I would expect—

MR. REYCRAFT: Your Honor, I think the witness is being asked for legal opinions, and I am not sure that he's equipped to give them. He said a little while ago that he wasn't.

MR. BENTKOVER: I'm not asking for legal opinions, I'm asking him to assume—

THE COURT: Let's not have colloquy between counsel. Obviously, counsel has the right to cross examine the witness on anything he said yesterday, and he has been cross examining on topics raised yesterday. Take the chart, for example, his methodology and conclusions certainly may be examined on cross examination. But let's just take that chart.

Gentlemen, you have to realize that weeks from now I'll be studying this transcript and if there's some way

to cross examine on conclusions rather than on the working papers line by line, it would be much more helpful to the Court. Whether that can be done or [1168] not, I don't know, and I won't stop you from pursuing it. All I'm saying is that if I have to go through 40 pages of transcript, maybe more, to determine what column A means, which, in effect, really is only his conclusion, anyway—an opinion—as to probabilities, you can see that somebody is going to be losing ground here. Unless I hire a special master to read those pages and tell me what you two are talking about.

I do understand certain things. I understand that this is his opinion, that the trend will continue along those lines.

Now, if his reasoning is faulty, that's fine for you to demonstrate.

For example, yesterday you said, "Look, here's a chart that shows comparables in competition. Let me point out where there's areas that were not on the chart." You see—

MR. BENTKOVER: Yes, your Honor.

THE COURT: —that all comes across very clearly. But you have to know that I'm going to have to recall some of this, not all of it, and it is very difficult to go back and forth, so that it just doesn't make sense in the transcript.

[1169] So it will be easier if we could get to the point, and you can maybe use leading questions a lot more than you are. But apparently you have done quite a bit of study on this and preparation.

Now, that's just introductory to my ruling. The objection is overruled. Because I think it is part of what we discussed yesterday, that is: the possibility of mergers, and he did say that he not only would like to see this merger, maybe he'd like to see a couple more. So that we come to a figure that at least in his opinion would be a healthy situation, that is: five statewide banking areas, of five different banks, and you could pursue that.

MR. BENTKOVER: Yes, sir, your Honor.

THE COURT: I'm very interested in that.

BY MR. BENTKOVER:

Q Well, then, I just want to get one thing straight, Doctor, column A represents your assumption that there will be no additional mergers—

A Beyond 19—

Q —in the future?

A Beyond 1972, the entire chart is based upon that assumption.

Q Okay. And if there are additional mergers in the future, [1170] your column A will understate the percentage increase for the future, is that correct?

A It will not state correctly the emerging structure, which all the details are dependent on this assumption, and it was on that assumption that I drew up the chart.

Q As I recall your testimony yesterday, you indicated that in the—a trend has begun in Connecticut that you are concerned about, and that this trend began the middle 1950's when CBT merged or was formed, is that correct?

A I would say that was certainly one of the triggering points.

Q Your trend period on D-13 commences in 1959; I'd like you to turn to Exhibit D-8, please. Where you do have figures for the year 1955.

A Yes.

Q On Exhibit D-8, you show the percentage for the top two banks as 35.9%—

A Yes.

Q —is that correct? So that we can assemble this data on D-13, would you mind just marking 35.9 on your sheet or keeping it handy?

A On D-13, in other words?

Q Yes. And that's for the year 1955?

A That's right.

[1171] Q Now, from D-8, can you calculate what the percentage is for the next six banks by subtracting the percentage from the—of the top two from the top eight?

A I'm—I heard your question, but I must concede that my mind was not listening as carefully. Would you ask me to do that again?

Q For the year 1955—

A Yes.

Q —can you calculate for me the percentage held by the next six banks by subtracting the percent of the top two from the percent of the top eight?

A Eight. All right. 24.6.

Q Correct. Would you now put that on D-13?

A All right.

Q And tell me what is the percent increase from 1955 through 1959 for the next six banks?

A Well, the—

Q The absolute increase?

A Forgive me, you aren't asking the question correctly

Q I realize that I'm not an economist.

A In points the increase was 11.2 points.

Q And in percent it would be perhaps 40%?

A Yes.

Q It's fairly substantial isn't it?

[1172] A Yes.

Q Now, would you do the same for the largest two banks?

A Would you permit me to comment on why that took place?

Q Certainly.

A Well, you see, we had some substantial mergers taking place during this period. You see, all you do, if you think of it in terms of a list of eight banks, or out of a total of, shall we say, 75 banks, now, in any one of those eight or any—you proceed to create mergers as, in fact, took place, and I don't recall which they were in this period, but if I'm not mistaken, this was a period in which, for example, the National Bank Trust Company of Fairfield County, subsequent State National merged, out of Greenwich Trust and some others, Fairfield County, I think, emerged during this period, you would get this kind of shift, so that the reason I did not begin with 1950 was that this period was a period of—as a matter of fact, of fairly significant changes in structure. But I could have.

Q But—so there was a very large increase among

the next six banks because of mergers in that period? And your projection into the future assumes there will be no mergers?

A Well, no, I think—

Q Is that correct?

[1173] A Correct. But may I—

Q Certainly.

A—say one thing more? If you would go in D-8 back to 1950, you would—you say to push it back to 1950—

Q I'm starting at the period you said the trend began which concerned you, and that was around '55.

A All right. But if I begin in '50, you will notice—you see, the step by step process. In 1950, the top two had 23.7%, subsequent to the mergers of CBT, it had risen to 35.9. Now, as you pointed out, in 1955 this merger having taken place, the top next six had 24.6, the shoe then fell and you will notice that it dropped, the next four years we got the ratio back to where it was, this kind of cancellation, the top two having a certain share, they increase that share, the next six play the game and they increase their share, so we're back to where we were.

Q And so concentration in Connecticut is increasing as one shoe falls and then another, correct?

A Yes, there was, of course—

Q And the concentration in the top two increases, correct? And concentration in the next six increases, correct?

A But there is an important difference in the scenario, there was, in fact, no antitrust law with respect to banking in this period.

[1174] Q The effect on competition is the same, and the effect upon the people of Connecticut is the same, isn't it?

A Well, I—if I really thought that, I don't think I would be here.

Q You are in favor of increasing concentration, then, is that correct?

A No, all I'm saying to you—if I understand your question, you are asking me—I may be mistaken—that in the period prior to the establishment—to the Bank Merger Act when mergers were proceeding the pace we

have described, there was a particular pattern, and then subsequent to that there's a pattern that is different.

If I compare those two, I think there's a significant difference in behavior before and after the law.

Q Doctor, you have started the trend in 1955. Would you tell me what the absolute percentage increase in market share of the two largest banks was from 1955 through 1970 as you have it on your table?

A About four points, isn't it? Four—

Q It's—

A —three, let's see—

Q 3.3, I think.

A To be more precise—its is 3.3.

Q So that in the 15 years the market share of the two [1175] large Hartford banks increased by only 3.3 percent? Now, how much did the market share of the next six banks increase in that same period?

A 13.4

Q Correct. And you did not include the period 1955 through 1959 in making your projections, did you?

A I did not.

Q And if you had included that substantial increase which you have excluded from this table, you would show a fairly large increase in the future, wouldn't you?

A I would have.

Q Correct. Doctor—

A May I make a further comment?

THE COURT: Obviously, I am missing this somewhere. Maybe you can square me away. You mean when CBT merged in the different periods of time that it did, its overall share of the market only increased 3.3, is that what you are telling me?

MR. BENTKOVER: The two largest banks in the State in Hartford increase their share by only 3.3% in the 15 years from 1955 through 1970. However, the next six largest banks increased their share in that same period by 12.4%. That doesn't show on this table because Doctor Stokes did not go back to [1176] the period of time he said the trend began in 1955, which leaves out some fairly substantial growth of the next six banks. And he's testified that if he had included that, he would

project an increasing trend in the future for the next six banks.

THE COURT: Obviously, I'm missing something that perhaps is clear as the nose on my face, but how could two banks merge of the size of CBT and some of the others, and Hartford National merge, and only pick up 3.3% of the increase in their share of the market? What am I overlooking?

MR. BENTKOVER: I'm not sure what the actual underlying facts are to explain this. Why the next six large banks increased so rapidly and the Hartford banks didn't, but it is a fact that it's happened. And that the next six banks have closed the gap in that period, so that they're now almost equal to the two large Hartford banks.

THE COURT: Do you have any different answer to my question?

THE WITNESS: I do have a different answer. I have been trying to demonstrate, your Honor, that this is a kind of a step by step process, and let's take [1177] a look at the performance of the top two banks in Exhibit 8 which the attorneys has asked me to look at. In 1950 these top two banks, which did not then include the existing CBT, had only 23.7%. By 1955 the merger having taken place they were at 35.9. So that the effect of that merger was largely felt over this period.

Now, in 1950 the percentage held by the next six banks—incidentally, I should make it clear your Honor, that—that the banks have not necessarily all the same names, but there's some jockeying around in position, so we're just taking banks without knowing what their names are.

In 1950, the top six—the next six banks—and this can be obtained by subtracting, as I was asked to, from the top eight, '53, 23.7, the top—the next six banks had 29.3%.

In other words, in 1950, this was the situation: The top two banks had 23.7% of the total deposits. The next six banks had 29.3. By 1955, the merger having taken place, the Connecticut Bank and Trust having been created, this was the situation: Whereas in 1950 the Hartford banks had 23.7%, they had 35.9% in 1955. Whereas

the next six banks had [1178] 29.3% in 1950, they had dropped to 24.6 in 1955.

So that the effect of the merger was quite clear.

Now, from there on we observe an attempt to recover position, and, in fact, by 1959 the next six banks, as chart D-13 shows, had recovered their position to 35.8, and the Hartford banks had then dropped to 35.2, and we can see this jockeying as they attempt to get ahead of each other, but the net effect shows that by 1970, despite whatever competitive moves the next six had made, the Hartford banks were now firmly ahead and they had begun 20 years earlier firmly behind.

BY MR. BENTKOVER:

Q By firmly ahead, you show 2.2%, is that right?

A Yes, and notice—

Q And—

A —that takes—pardon me. I'm sorry, I— I—

THE COURT: Weren't there some other mergers in '68?

THE WITNESS: Yes, I was about to make that point. You will notice in 1968 the firmly ahead position was by that time three points, because in 1968 the next six banks had 34.8 having dropped from 36.1, so some mergers took place, as you attempt to reconstitute this [1179] structure, and we're now back up to 37. But whereas that would have done it had '68's Hartford position remained the same, it was not sufficient to overcome the Hartford lead, and so by 1970 there was still a gap of two points between the top two and the next six.

BY MR. BENTKOVER:

Q Just one point which you have made already, if you include the performance of the next six beginning at the start of the trend, that you would have projected an increase into the future for the next six banks, is that correct?

A Well, what you are really asking me to do is to tell me—tell you why I chose a particular year—

Q I'm—I just have a few simple questions. You said the trend began in the middle '50's, correct?

A I said I—that the facts that triggered the change

took place, and I think in the last few minutes I have demonstrated what was the nature of that kind of change.

Q And if you start your trend at '50 or '55, you are going to show an increasing projection into the future, will you not?

A I will.

Q Okay.

A But it seems to me that does not take account of what, in fact, happened. I had to take account of that step by [1180] step—that stepwise response, so I chose to put them at even-Steven in 1959. I could have chosen almost any year and proved almost any point, but I tried to make them essentially even.

Q I know you chose the one year which would permit you to project a stable figure for the next six—

A If I had chosen 1950, I would have gotten similar figures.

Q If you had chosen '50, there's even a more substantial increase up to 1970?

A Not really.

Q I think you would—

A Yes. Notice the change I would have gotten for the Hartford banks—you see, if I had taken 1950, I would have gotten an increase from 23.7 to 39.2, and whereas for the next six is only from 29.3 to 37, so that the increase—had I chosen Hartford at '50, would also have been substantial, but once again showing the Hartford domination, I tried to avoid that '50, '55 change, so as to leave it out of the consideration.

Q So you showed they were all increasing if you had used '50 or '55?

A Yes, but I would have shown that the Hartford banks were, in fact, increasing faster.

Q So, then, you would project now into the future that the Hartford banks are going to increase and that the next six [1181] yould increase at a slower rate?

A That's what would have been the result had I moved earlier.

Q Now let's take the projection you have actually made. You have 1970 for the Hartford banks 39.2%?

A Yes.

Q And for the '72, 40.1%, and you are projecting an absolute rate of change of .9%?

A Correct.

Q What is the figure you projected for the year 1971?

A It would have—it would be—

Q Would it be 39.7%

A Something like that, yes.

Q It would be 39.7. And what is the figure you would project for the next six banks?

A It would be somewhere around 36.

Q Okay. The source for these years was Polk's Bank Directory?

A Correct.

Q Do you know when Polk's Bank Directory for the year 1971 is published?

A It should be available now.

Q It was available last spring, wasn't it?

A Yes.

[1182] Q And when did you prepare these projections?

A I prepared these projections last spring, and I have adjusted them since.

Q Would you look at Exhibit D-17, please?

Is the year 1971 in that year?

A Yes, it is.

Q So you used Polk's Directory to make that exhibit?

A Oh, yes. Incidentally, what I did in D-13 was drop out '71. I could have put it in. It appears in my work sheets.

Q So you do have the data for 1971?

A Somewhere in my work sheets, yes.

Q But you dropped it out, is that correct?

A I was dealing with two-year changes.

Q In making projections, is it important to use the most recent available data you have in order to project into the future?

A It is important to have as many observations as are—as are—as reflect the trend.

Q Would you look at Exhibit D-12?

A All right.

Q And look at the title, the first line of the title:

Connecticut Headquartered Commercial Bank Deposits, 1959 to 1971.

A '71, yes.

Q Correct?

[1183] A Yes.

Q Is the year 1971 on that?

A It's not on this chart.

Q Could it be that you prepared a chart including 1971 and then dropped it out?

A It's possible.

Q I think it's likely.

A Yes. I am sure that I have used '71 figures.

MR. BENTKOVER: We'll mark as Exhibit P-126 a table entitled: Connecticut Headquartered Commercial Bank Deposits, 1959 to 1971 with Projection to 1982 Showing Growth of Two Large Hartford Banks and of Next Six Large Banks.

[1184] Q Dr. Peck, would you examine Exhibit P-126 For Identification and state whether you prepared that?

A I did.

Q And this exhibit does have the year 1971 in it?

A It does.

Q Correct? But the one you have been testifying on does not have it?

A Correct.

Q The year 1971, correct?

A Correct.

Q Do you know what the percentages are for the year 1971?

A I don't have them at hand, but I could easily find them out.

Q We do want them in the record; and I have calculated them out for the largest two banks, I have 38.5 percent and for the next six banks I have 37.9 percent.

MR. BENTKOVER: I do want those in the record, so if you would like to calculate it or we could get a stipulation on that.

MR. REYCRAFT: I will take your word for it.

A I will accept them.

Q Now, Doctor, you have projected, I believe you said,

39.7% for the year 1971 for the largest two banks, correct?

[1185] A 1971 I have projected what?

Q I believe you stated that your figure would be 39.7% based on your projections?

A Yes, based upon that straight line projection.

Q That would be an increase of about .5%, correct?

A Correct.

Q But in fact there has been a decrease of .7%—

A Correct.

Q —in one year, correct?

THE COURT: Wait a moment, now. Try not to talk together.

MR. BENTKOVER: Yes, your Honor.

THE COURT: Ask your question again and see what his answer is.

Q But in fact there was a decrease from the year 1970 to 1971 of .7%, is that correct?

A Correct.

Q So your projection was off by 1.2%?

[1186] A Correct.

Q And you projected an increase where there was a decrease?

A Correct.

Q Now, let's look at the next six banks. I believe you said it would be about 36%?

A Correct.

Q And in fact it went up .9% to 37.9%?

A Yes.

Q So that instead of a decrease there was a substantial increase?

A There was an increase.

Q And in fact the difference was about 1.9% comparing your projection—

A Yes, I—

Q —to what actually happened?

A Right.

Q And that's only in one year, is that correct?

A That's correct.

Q Did you take into account the year 1971 when you made your projections into the future?

A I think I did.

Q You have testified that you have used link relatives going only through the year 1970?

A Actually I used every possible measure I could think of.

Q Do you know whether or not you did include the year 1971 as a basis for projecting?

A I think—let's see. We have talked about—precisely what projection are you asking me about?

[1187] Q The projection for the largest two banks and for the—

A What projections are you asking me about?

Q The projections for the largest two banks and for the next six banks?

A But of what? Of the concentration ratios?

Q Yes.

A All right. I think I did.

Q Well, let's—if you plot on Exhibit 11 the increase which did occur for the next six banks you are going to have several circles going up at a very steep rate, isn't that correct?

A Not several, but just one more.

Q Right. And still you are able to draw a line which is horizontal?

A I'd have to check that, but I think it might well—as I recall, initially—I think the answer to that would be yes, I think it would be. You see, the reason for that is that what we're doing after all is to take—we're taking 35.8, 36.6, 36.1, 34.8, 37.0 and the 37.9. Now,—

Q That's the point, Doctor. You didn't have 37.9 there.

A But you have asked me—the question you asked me was whether or not I had taken that into consideration. I said, now, let's do that. If we did that we would then have the [1188] absolute change from 35.8 to 36, and that took place over five years. All right? And we'd have the change from 36.6 to 36—decrease to 36.1, that was a change over a two-year period, and a further decrease from 36.1 to 34.8, these are the two years, then the increase of—to 37.0 for one year, and then the further increase to 37.9.

Now, if you take those points of increase and multiply them by the number of years over which they're observed and the average through, this was the method which I used to obtain the figures.

Q The year 1970 is what you have testified was the latest year which you have used for your projections and it's the only year in which it appears on the exhibit?

A Yes.

Q And in fact you withdrew 1971 from this exhibit, didn't you?

A Actually I—may I describe the process that took place here?

Q Could you answer the question?

A I withdrew it largely because—

Q It rebuts the projections you have shown?

A No. Government induced me to change it, actually, by pointing out some errors in it.

Q Not in that year. So that if we look from the period [1189] '59 through '71 what is the actual percentage increase for the next six large banks? Is it 2.1%?

A You mean in percentages?

Q Absolute percentages. Is that—

A Yes, but I would never do it that way.

Q It's an increase, isn't it? Is it?

A Yes.

Q Of 2.1 points?

A But if I were to make comparisons it would be between the method—the effect would be on—see, to repeat, the method involved, taking each of the observations over the number of years concerned, so what we're adding in is the 37.9. You want me to do that, the 1971 figure? Now, what was done is very—was perhaps too simple. From six '59 to '64 the figures rose by .8%. Now, that .8% took five years, I said. The next change was a change of .5%, and was a decrease, and that took place over a two-year period. The next change was a 36.1 to 34.8, and that was a decrease of 1.3 and that took place over two years. The next change was from 34.8 to 37, and that was an increase of 1.2 plus, and that took place in two years.

Q Is that 2.2?
A Pardon me. 2.2. All right. I'm sorry. You're correct, 2.2. That took place over two years. Now, if I were [1190] to add in '71, which is what you wish me to do, I would—
Q I—
A —I had an increase of .9, which took place in one year. I now have 5, 7, 9, 11, 12 observations. Now, what I did then, having gotten this, was to multiply each of these percent—each of these percentage changes times the number of years and then divide through by 12.
Q But, Doctor, before you testified that you divided through by 11, I believe.
A Oh, yes. Well, now—
Q So that you used 11 before and—correct?
A Yes.
Q —and that means you did not include the year 1971 in your projections?
A Correct. Correct.
Q Correct?
A I'm simply—
Q So your projections do not reflect the substantial increase by the next six banks in the year 1971, correct?
A I suggest this would not have made much difference in the figures.
Q Would you answer the question, please?
A Yes.
Q And they do not reflect the substantial decrease by [1191] Hartford banks for the year 1971, is that correct?
A They in fact do reflect a substantial—a reduction in the Hartford banks since I deliberately chose a lower figure for that.
Q You didn't use the year 1971 as a base in your projections, did you?
A No.
Q And did you—
A Nor in fact did I use all the figures. I in fact lowered the projection.
Q And if you had used them you would come to a lower projection for the Hartford banks?
A Not lower than the one I actually achieved, no.

Q You wouldn't have used the most recent year, then, if you used the projection for the next six banks, you would have come to a much higher projection, wouldn't you?

A It would have been higher, but not a much higher, projection.

Q You mean you still would have been able to show that the next six banks would not increase for the next 12 years—or 10 years, is that correct?

A Yes, I think so, since, as you point out, most of that increase which would have made a difference in this method took place in fact between '68 and '70. That was 2.2 points, as [1192] you pointed out, but the change from '70-'71 was only .09 points.

Q Well, the Hartford banks were declining by point seven.

A Yes.

Q The next six were still increasing?

A Well, now precisely the same thing would have been true for those figures. What I did there, once again, was to take the percentage changes and average them; and because I did not want to make too strong a case in terms of the growth of the largest two banks, I deliberately decided to take a somewhat smaller figure for the rate of growth, the .9 point that you had me testify on, than the figures themselves would lend—would suggest, so as not to make too strong a case and not to be subject to the criticism that I was extrapolating away to the ceiling.

Q If we recap, start from the time you said the trend began in 1955 up to the most recent year, what is the percentage increase for the two Hartford banks? Would that be from 35.9 to 38.5?

A It would be from—for the two Hartford banks? Yes, it would be.

Q And what is the percent?

A To 38.5? It would be 2.6.

[1193] Q In 16 years?

A In 16 years.

Q Now, look at the next six banks, and for the same period how much did they increase?

A May I just pause a moment? Taking the figures

which you have asked me to comment on, from '55 through '71 it would have been 13.3.

Q 13.3% increase for the next six largest banks as opposed to 2.6% increase for the Hartford banks in 16 years?

A In the period to which you have asked me to comment?

Q Correct.

A This would have been the result.

Q So that the next six banks increased five times as much in percentage terms as the two Hartford banks, correct?

A The figures for the period for which you have asked me to comment on, the answer is yes.

Q Right. And for the period you chose to use, you excluded the growth which came just before the period, correct?

A Well, let me—may I answer that?

Q Certainly. But first I would like a yes or no answer.

A Did I exclude 1955, you said?

Q You excluded the period that showed the next six largest banks increasing—

A Yes.

[1194] Q —more rapidly than the Hartford banks?

A I excluded the period of the '50's. The entire '50's.

Q And you excluded the year 1971 which showed the next six largest banks increasing while the two Hartford banks decreased, is that correct?

A In the Exhibit D-13 1971 does not appear, it had, however, been a part of my calculations.

Q Well, you testified that using the link relatives, you had used 11—

A Yes.

Q —correct? And if you had included the year 1971 you would have used 12, is that correct?

A Correct.

Q So you didn't use 1971, did you?

A Not in the specific figures here.

Q Right.

A May I comment, though?

Q That's the point I wanted to make.

A I looked at these figures, oddly enough, beginning in 1920. I took every year from 1920 on and I agonized over this question as to where was I going to draw any lines—should I take 1920 as the beginning—but I knew that there was a bank holiday in '33, and this made a difference. Then I determined that I should take 1940. Each year we find a changing position. [1195] I finally decided—and this was a question of judgment, it was not done to prove any particular point—that at '59 we finally had accomplished that wave of mergers that had taken place and we had them more or less even.

Now, I looked at that from many, many directions. I tried to consider what was the Hartford share as a total—all Hartford banks, not just the top two, what was the share in Bridgeport, what was the share in New Haven. We have here a fascinating picture of change of structure. So I tried to get them in such a way as not to show either too rapid a change on the part of one which was accounted for by a chance circumstance or too rapid a change on the part of another chance circumstance. So that I took '59 because I thought that no year prior to '59 would be an adequate year. As I pointed out to you, throughout the '50's it was very clear that there was considerable jockeying for position going on. I had to wait 'til that jockeying had ended. Because I got enormous jumps in figures as between the two; one moved up fast and the other moved up fast, and I could prove almost anything by just selection of one year as against another in that period, so I chose to jump past it.

Q Are you finished?

A Yes.

Q Do you recall that we met earlier this year—

[1196] A Yes.

Q —and discussed—

A I do.

Q —for a couple of hours some of the issues that were involved in this case?

A You and I—and Mr. Clark came out to my home—

Q Correct.

A —and visted with me.

Q And do you recall that we were both taking notes on our yellow legal pads?

A I don't—I must concede that if you were, I wasn't aware of it.

Q There was one question you were asked. What in your view would happen if their merger were not permitted, and my notes have you as saying that you believe the local Bridgeport banks would try to enter Hartford via merger. Is that in accord with your recollection?

A It's possible I may have said that, but had you asked me at that stage, much as the Judge has, to think about the future—

Q If this merger were not permitted?

A —and I must say that I do not recall specifically what my answers were, but if you have them, you can quote me—quote them to me.

[1197] Q Well, that is what I have you as saying. That you thought that if the merger were not permitted the local Bridgeport banks would try to enter Hartford via merger, does that accord with your recollection?

A I simply don't recall having—

Q Well—

A What you're doing is taking a comment which I made out of a rather long conversation in which you and I and Mr. Clark were exploring, as I recall, a wide variety of possible scenarios for the bank and you wanted my opinion and I may have said this and I am sure I said quite a few other things. But specifically, if you said I have said it, I said it.

Q I'm asking you—

A I think it should be put in whatever context it was that the conversation was taking place.

Q Is that your opinion, that the local banks in Bridgeport would try to enter Hartford via merger?

A I, as of this moment, and—and perhaps mature judgment, it would certainly be one of the things they could do, it would be—incidentally, I have had a chance to take a look at what that would really imply, and it's doubtful, but it's—it exists as a possibility.

Q You said they may also try to bring down New Haven and Hartford by merger or by branching?

[1198] A Yes. But I think it should be pointed out what we were discussing was a possible scenario, were we not?

Q Yes. Assuming this merger were not permitted we asked what you would think would happen?

A I was trying at that stage, not having any of the facts, not having discussed it with any of the bankers, to comment. Subsequent to our conversation I took the trouble to find out by talking to banking friends what they really thought this situation might be.

Q At that time I think you probably were studying the banking situation in Connecticut for perhaps ten years or so?

A I had been looking at it in some detail for some time.

Q I think you also indicated that you thought a holding company was probably a likely means of expansion?

A Oh, yes.

Q You thought that then?

A I think it now. And, incidentally, I—I think the remarks that I made then were essentially apposite remarks.

MR. BENTKOVER: We have no more questions, your Honor.

THE COURT: Redirect?

[1199] REDIRECT EXAMINATION

BY MR. REYCRAFT:

Q Doctor Stokes, do you have—

THE COURT: I just may comment, a—a little bit of trial technique here. When dealing with experts, it is actually objectionable in some respects to say, "Is it possible?" If we're looking for opinions along any line, the Court is more interested in the expert's opinion whether it is reasonably probable. There's quite a difference. I think most experts will say anything is possible, then you ask him what, in his opinion, is rea-

sonably probable, and I am not sure that some confusion may enter into his opinion because of the word "possibility" and the words "reasonably probable". And also that counsel sometimes may be using those terms synonymously and later on when you are making claims to me, I might very well take the usage I'm giving those words more seriously than maybe counsel is. I mean, frankly, I'm not interested in what's possible, I'm more interested with experts—such a statement, a reasonable degree of accuracy and based on their knowledge and reputation, is it reasonably probable that, do you see?

[1200] MR. REYCRAFT: Yes, sir, I sure do.

THE COURT: I suppose there are many things that can happen as possibilities ony way or another.

MR. REYCRAFT: I think those were the words that Doctor Stokes had used, so I did not want to change them.

THE COURT: I'm not being critical of counsel in any way, I'm just saying later on when I'm reading this transcript, the Court does regard the use of the word "possibility" differently than "reasonably probable". So with that in mind, you might want to conform your questions so that later on when you might—either side might say, "My expert said that this was possible," you might find me saying, "Well, I'm not interested in what's possible, I'm more interested about what, in his opinion, was reasonably probable." It may sound very technical to nonlawyers, but I think you understand. Just for example, a medical doctor—

MR. REYCRAFT: In Clayton Act cases the Courts have talked in terms of reasonable probability and not mere possibilities.

THE COURT: Right.

[1201] BY MR. REYCRAFT:

Q Doctor Stokes, just on that same line, I, of course, knew of your conversations with Mr. Clark, and I believe it was Mr. Bentkover—you told us about that?

A Yes.

Q When we—when we discussed with you your testimony here, and, of course, I don't have a memorandum

of that conversation and I assume you don't, but I assume that your conversation did cover the whole range —a whole range of possibilities, and I assume also that, as you testified, you had not made any specific study of this merger notwithstanding the fact that, as Mr. Bentkover brought out, that you have been a student of the banking scene in Connecticut specifically for a number of years, is that correct?

A Correct. May I amend—may I say something here?

Q Yes, please do.

A I was pleased to have these two gentlemen come and visit me, they asked for permission and they spent some three hours, and they were quite generous in spelling out for me not only—obtaining my opinion in knowing what the government's case was, and I thought surprisingly frank. I felt, however, that that conversation should not be—I should not reveal it to anyone because at the time some discussion of the possibility of my being a witness came up, and since, in fact, as I told them in a letter, I didn't feel I should be, I didn't— [1202] I'm sure there may be no ethics involved in this, but I felt that since the government had been gracious enough to spell out some of their thinking, I should not use that, if I were dealing with another counsel, so I proceeded to remove that conversation from my mind and felt that I could not in honesty use that conversation in any case.

Q Well, so the record is clear, I would like to state that you did not at any time tell me the substance of that conversation, nor my associates, you told me of the fact that the conversation took place and that the government asked you to testify as an expert on the government's behalf, and that's all you told me.

A Yes.

Q Is there anything about that conversation in view of what Mr. Bentkover has asked you—and I still don't know what took place—that you would like to add to what is—the questions he asked?

A Well, yes. I think there are two things that I would have to say. One is that in the course of a pleasant conversation in which quite a number of possibilities and —were being considered, and in which the government

was spelling out some—their view, I was responding in the light of that conversation, and I was trying to reach out and say: well, now, here are some of the alternatives, and I was also saying, in effect, to them that I really didn't think the case out to be pushed ahead. I wanted [1203] them to understand that I felt that the merger should be permitted to take place. But that I recognized their opinion, the whole point of the matter is that I just didn't realize that that conversation taking place on a pleasant spring day would ever appear.

THE COURT: We don't have to go into all of this. I understand how these things come about. Lawyers sit down and talk to experts for three or four hours, and it is a fact, is it not, that it is a possibility that CNB could merge with a Hartford bank?

MR. REYCRAFT: Yes.

THE COURT: I mean just if I turned to this witness and said, "Is it a possibility that 20 new petitions for newly chartered banks might be submitted to the State Banking Commission?" I think an expert probably would say, "Sure, it's a possibility." I have no way of knowing, but if I asked him, "Is it reasonably probable," he probably would say, "Well, no, we have never had that amount in the history of Connecticut."

So I understand how these things go back and forth. We don't have to really explore that. Because I think Mr. Hawley was asked a lot of things. Isn't it possible that this could happen, and the answer was: "Yes, but not reasonably probable because we don't have the money." You see.

So you may be covering something that I fully understand, Mr. Reycraft.

Q Just ask him one more question on this subject, and that is: why did you tell Mr. Clark that you did not desire to appear as a witness for the government in this case?

A Well, I felt really that since I had advised the banks to—at least one of them to consider the merger, I couldn't in all honesty appear against them. I thought seriously about this, but I felt that I could not appear

for the government's side if I had, in fact, been responsible for what the government's case was.

Q All right. Doctor Stokes, will you refer to D-20? Do you have that with you?

A Yes.

Q Mr. Bentkover asked you some questions about the investments of banks, specifically the investments in corporate bonds and corporate stock, and I get a total on D-20 of 904 million dollars, approximately—

A Yes.

Q —of this kind of corporate financing, and you testified did you not, that this is financing which is used by corporations in running their businesses, is that correct? [1205] A It is. It is.

Q And will you compare the total amount of commercial and industrial loans made by commercial banks in Connecticut during the same period or held by commercial banks during that same period?

A It's in the same neighborhood, a billion, 18 million, as against 904—

Q About a hundred million of difference?

A Yes.

Q Also loans made for general corporate purposes?

A Yes.

Q With some differences in—depending upon the time the money was desired, but basically for general corporate purposes.

Doctor Stokes, will you refer also to P-118, which shows the total amount of deposits of banks in the State, and I recall your testifying that 8% of those deposits are available for personal loans, is that correct?

A Yes.

Q And I got to make this short—8% of the total deposits held by savings banks in the State, a little over 6 billion comes to 486 million, 864 thousand, 400 dollars, and if I subtract from that the amount of personal loans actually outstanding in savings banks of 207 million, 412 thousand dollars, I get a figure of 279 million, 452 thousand, 400 dollars, which [1206] is now available legally from commercial banks to make personal loans, am I correct in that conclusion?

A Correct.

Q Assuming my mathematics are correct?

A Yes.

Q Now, also there is a line which was referred to by Mr. Bentkover, Loans to Other Financial Institutions. Now, it wasn't clear from the examination, at least to me, whether these financial institutions include commercial banks or not as used on this form. Can you answer that question?

A Well, on this form, the loans to domestic, commercial and foreign banks is separately listed and includes the amount 6 billion, 232 dollars—232 thousand, there is a separate listing on page 102 of Exhibit 118, P-118, which is loans to other financial institutions, that figure is not here, but if it were added, it would be another 5 million, 800 thousand.

Q But in each case where this exhibit refers to loans to other financial institutions, these are financial institutions other than commercial banks? Is that correct?

A Other than commercial banks.

Q And what kind of financial institutions are included in that general category?

A They might be, for example, to other savings banks, savings and loan associations and the like.

[1207] Q Small loan companies?

A Small loan companies.

Q Household Finance, Beneficial Finance and the like?

A Beneficial Finance.

Q Doctor Stokes, Mr. Bentkover asked you a question concerning the general—your general assumption concerning whether a bank would report all of its business in an area as emanating from its offices in that area.

Now, I believe he was trying to draw an inference that the Hartford banks, for example, report all of their New Haven business in their New Haven offices. Did you mean to express any conclusion on that subject, or do you have any information on that subject?

A I have some general impressions that this would not be—the Hartford banks would not, in fact, be re-

porting for New Haven all the business generated in New Haven.

Q You have no specific information on this?

A No specific information.

Q You cannot specify, for example—

A I'm no—

Q —that the Hartford banks already have all their New Haven County business in their New Haven offices?

A No, I'm pretty sure that does not take place, as a matter of fact.

[1208] MR. REYCRAFT: I have no further questions.

THE COURT: Recross.

MR. BENTOVER: No questions, your Honor.

THE COURT: Thank you. Maybe you should stay on the stand while I ask these questions, because I'm going to ask them of counsel and maybe you might have a comment.

These things are probably crystal clear in the counsel's mind, but in the Court's mind I have some confusion as to the conclusions drawn—or to be drawn whether or not I accept either side of what these figures show. Okay. Now, I gather that the overall impression that the defendants are trying to create, at least with respect to one set of statistics, is that the two Hartford banks are penetrating markets on a statewide basis and as a result, they are eating into the market to a degree that other banks must merge defensively to protect themselves by the higher lending limits, et cetera.

And also to come within good business and also the law, they could become procompetitive by not only defending, but attacking. The government comes back and says, "Hold it, hold it, stop, these figures are not quite accurate, it shows that the two Hartford banks have [1209] not been gobbling up the percentages of the market that the defendants are trying to show through this expert."

Am I correct so far, something along those lines?

MR. BENTKOVER: Yes, your Honor.

THE COURT: All right. So now why shouldn't I react this way: if the merger of the Hartford banks didn't affect the market that much as the government

claims, why should I be leary about the merger between these two, CNB and First New Haven? Because the concentration isn't going to mean anything because the two banks in Hartford with their big mergers only gained 2.9% of the market, so if I project that and argue the opposite side of the coin, the merger here in this case will have very little effect on the market.

Now, where's my—logic faulty there?

MR. BENTKOVER: First, your Honor, the other six banks merged along with the Hartford banks, so that they did keep pace, that's one period of time, which I was discussing with Doctor Stokes. Then there's another period of time in the very recent future where the Hartford banks started moving into this particular area of Connecticut. Originally, [1210] CBT tried to acquire Connecticut Bank, which held 40% of deposits in the Bridgeport SMSA and, of course, the Justice Department sued to enjoin it. That is a merger which we did not think would help competition, in fact, we thought it would substantially lessen competition.

So CBT instead came into the Bridgeport area by buying the Columbus Industrial Bank, which, as Doctor Stokes has testified, had no deposits, so the Hartford bank came in and started from scratch in Bridgeport.

So there are two kinds of mergers, one where you go in and acquire the leading bank, and another where you start from a very small place. The first one we consider anticompetitive, the second one can be procompetitive, so there's a difference in mergers.

THE COURT: How about in theory? I mean on the one hand it is a point for the government to say, "The mergers we have allowed have really not been anticompetitive. Look, they have only picked up 2.9 of the market," but by showing me that, aren't you also showing me that another merger would probably not be anticompetitive, either?

[1211] MR. BENTKOVER: If it were a merger of a simliar scope. If CNB had wanted to enter the New Haven area by acquiring—

THE COURT: Okay. So then the faulty reasoning if

any, in my premise, is that I don't know enough about these prior mergers, is that what you are telling me? Like CBT merged with bank A in Bridgeport, but that was a small one, whereas this is a merger of two medium-sized banks, where the prior mergers were large, were small, is this along the Doctor Glantz' theory when he said to me he really thought that was good when a real big bank merged with a small one?

MR. BENTKOVER: Why Doctor Murphy testified that you do bring an additional bank into a market it has a favorable impact on competition, so that if a bank enters a market with a de novo office or with a small merger, and then expands that business, it is procompetitive, whereas if they buy the very largest bank in the market, it is anticompetitive.

So it's the kind of merger which a bank makes which—

THE COURT: I'm not sure at all if it's going to be relevant, but I wish either in oral argument or in writing or in a brief or through a bank historian [1212] of the State of Connecticut, I'd be interested in knowing the background of those mergers in Hartford without looking at charts. I mean I prefer to have someone kind of tell me, sum it up for me.

Now, maybe that will just end up satisfying idle curiosity, or it may be relevant to the decision in this case. But very frankly, I got the impression that these prior mergers were fairly large.

MR. BENTKOVER: No, your Honor. In fact, I could refer the Court to Exhibit P-72.

THE COURT: I know it's in there, but it just goes to show you sometimes just handing up a chart it's just difficult for other than a statistician to get all of this out of it. I prefer to have someone sometime point these things out to me, and at least what you are trying to show me now, show me by exhibits that the government has been consistent here in Connecticut, it really hasn't permitted large mergers to occur, but it really has no objection to the type of merger that slowly becomes statewide rather than two immediate joinder—I mean one immediate joinder that explodes statewide.

Now, I don't mean to say you haven't covered [1213]

your tracks and covered this in your exhibits, but I just make a mental note that I may like to hear about this.

MR. BENTKOVER: Your Honor, P-72 does give every merger since 1952, and it does show in summary that the Hartford banks have made no mergers or have acquired no banks with deposits more than 27 million dollars since 1955. The largest bank held only 27 million dollars in deposits. These banks, of course, are in the 400 million dollar range.

THE COURT: All right.

MR. REYCRAFT: Your Honor?

THE COURT: Oh, yes.

MR. REYCRAFT: May I answer?

THE COURT: Certainly. You may leave the stand, Doctor Stokes.

(Witness excused.)

MR. REYCRAFT: On Mr. Bentkover's point, I understand, of course, that the government's basic theory is that they want—they're not against mergers as such, they sort of like procompetitive mergers, and my disagreement with them is not on any trust policy, we don't —I don't think we're on the opposite [1214] side of that basic issue, it's a question of how it's interpreted, we think this is a procompetitive merger, their witness, Doctor Murphy, testified that with the divestiture we are proposing there will be no signifcant competition eliminated, and, indeed, there would be new entrants into the four-town area that the government talks about.

I think all the charts, including the government's make clear that there will be no competition eliminated with this merger by this divestiture, we think we also have established with—and Doctor Murphy agreed—that if the merger were to result in the combined bank being a more likely entrant into New London and Hartford, it would be procompetitive, we think this is a procompetitive merger.

The Department of Justice did review and not take action on the Union Trust merger, and I think they were correct in that, because that merger, like this one did not eliminate any significant direct competition. It

has, since it occurred, enabled Union Trust Company to enter New London, which it didn't do before.

We will have a witness from that bank who will [1215] explain that the merger—that Fairfield Trust Company, which was the former bank, would never have gone into New London without that merger.

THE COURT: Please let me hasten to add, Mr. Reycraft, that even if I accept government's position with respect to my question that I asked it, all is not lost for the defendants. I mean if it took the Hartford banks 15 years to become statewide by having one little merger after another, the argument could be advanced why wait another 15 years to give them some competition up in New London. Let's hasten things and put a third statewide bank so that the New London area, instead of having two or three banks, will have four. So that the Hartford area, instead of six, will have seven. I mean the argument could be twisted. Somebody said statistics may show one thing, but give another person enough time and he'll take those same statistics and prove that they show something else.

So I mean the argument can work both ways. I just was not aware that there—how the other mergers came about. Now it was answered. It's in the evidence, only I haven't studied, it.

Anything else you like to add, Mr. Reycraft?

[1216] MR. REYCRAFT: No, sir.

THE COURT: All right. Well, gentlemen, as you know, we're going to recess. Have a good weekend and we'll be back the 31st, Tuesday the 31st, at 10:30.

(Court adjorned at 1:00 p.m.)

[1217]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 14,583

UNITED STATES OF AMERICA, PLAINTIFF

versus

THE CONNECTICUT NATIONAL BANK and THE FIRST NEW HAVEN NATIONAL BANK, DEFENDANTS

and

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, INTERVENOR

United States Court House
915 Lafayette Boulevard
Bridgeport, Connecticut
October 31st, 1972

BEFORE:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

[1218] Appearances:

DEPARTMENT OF JUSTICE
Antitrust Division
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FRANK N. BENTKOVER, Trial Attorney
KELLEY V. REA, Trial Attorney

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GROVE W. STODDARD, Esq.

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By: RICHARD G. BELL, Esq.

UNITED STATES TREASURY DEPARTMENT
15th and Pennsylvania Avenue, N.W.
Washington, D.C.
By: CHARLES H. McENERNEY, JR., Trial Attorney
FORD BARRETT, Trial Attorney

[1219] THE COURT: Are the parties ready to proceed?

MR. REYCRAFT: Yes, your Honor.

Merton J. Peck.

MERTON J. PECK, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: What is your name, sir?

THE WITNESS: Merton J. Peck.

THE CLERK: And where do you live?

THE WITNESS: 415 Humphrey Street, New Haven, Connecticut.

DIRECT EXAMINATION

BY MR. REYCRAFT:

Q Doctor Peck, what is your present occupation?

A I am a professor of economics and chairman of the economics department at Yale University.

Q Would you describe your formal economics education?

A Yes. I began at Oberlin College with an under-

graduate major in economics and I graduated in 1949. I then went to Harvard Graduate School and received a Master's degree in economics in 1951, and a PhD in 1954.

Q Are you also from Harvard?

A That was also both from Harvard.

[1220] Q Are you a member of any professional association?

A I'm a member of the American Economic Association and the Econometrics Society.

Q And what has been your teaching experience since receiving your degree from Harvard University?

A From 1951 to 1955 I was first a teaching fellow, then instructor at Harvard University. 1955, 1956 I was assistant professor of economics at the University of Michigan. From 1956 to 1961 I was assistant professor of business administration, and then associate professor of business administration at the Harvard Graduate School of Business Administration.

From—I then left for government service, and in 1963 I was appointed professor of economics at Yale University.

Q Doctor Peck, have you specialized in any particular fields of economics during your teaching?

A Yes, I have. Throughout my graduate training and teaching I have specialized in the field of industrial organization market organization. This is a field that focuses on the organization of markets, the economics of pricing, the economics of antitrust and the economics of regulation. I have taught at both the undergraduate and graduate level in that field and directed doctoral dissertations in that field.

Q Have you written in this field?

[1221] A Yes, I have. I have published a book on competition in the aluminum industry which was published by Harvard University Press in 1961. I have also written a book—co-authored a book on the economics of transportation which was published in 1959. I have written a book on the economics of the weapon industry which was published in 1962. I have written other books and articles in this field.

Q And have you studied the economic literature with respect to such matters as barriers to entry or the effect of regulation on entry by new firms in new industry?

A Yes, I have. That was a topic in the book on the economics of transportation. There's a chapter on potential competition and entry barriers in my book on the aluminum industry.

Q And did your work in the transportation industry, your book regarding the transportation industry, go into this subject at all?

A Yes, it did. That is an important problem in the regulation of trucking. And certificates of—or franchises in trucking, it is also important in the airline industries in route awards.

[1222] BY MR. REYCRAFT:

Q Dr. Peck, you mentioned that you took two years out of your teaching for government service.

Can you tell me what you did while you were in government service? I believe you took two periods out for government service?

A That is right.

In 1961 and '62 I was director of systems analysis in the office of the Secretary of Defense. This job involved directing a staff which assisted the Secretary and the Assistant Secretary Comptroller on economic matters, pricing, procurement, as well as the economic issues in strategic decisions.

In 1968 I served as a member of the President's Council of Economic Advisors. This is a group in the executive office of the President, which consists of three members, which is charged with economic advice to the President as well as economic advice to the Joint Economic Committee.

Q Did you specialize in any particular area of economics when you were a member of the President's Council of Economic Advisors?

A Yes. I was the Council member that was responsible for matters relating to regulation of pricing, [1223] competitive policy.

Q During your government service did you have any

responsibilities for policies or issues relating to monetary policy?

A Yes; in the sense that the Council as a whole is concerned with monetary policy, it's one of its principal concerns, and, for example, the Council would lunch weekly with the board of governors to discuss such matters as open market operations, and we also lunched weekly with the Treasury staff on the same issues.

Q Have you ever had any direct experience in the field of bank merger policy or bank concentration or bank structure as such?

A No, I have not. I have not researched in that area.

Q Did you during the course of your government service have occasion to become involved in questions of antitrust policy?

A Yes, I did.

Q What was the nature of your involvement? This was as a member of the President's Council of Economic Advisors?

A That is right. I was the Council member that had the principal responsibility for the Council's position on legislative matters relating to antitrust and regulation.

[1224] Q Have you ever testified in any regulatory proceeding concerning the effect of proposed mergers on competition?

A Yes, I have. I've testified in the Civil Aeronautics —before the Civil Aeronautics Board and before the Interstate Commerce Commission.

MR. REYCRAFT: Is there any cross-examination on his qualifications?

MR. CLARK: Just a few questions.

EXAMINATION ON THE VOIR DIRE

BY MR. CLARK:

Q I want to clarify your experience, Dr. Peck in the field of banking.

Your work in this organization, then, has not at any time involved the studying of banking markets; am I correct?

A That is right, apart from this case.

Q You have no publications dealing with bank market structure; is that correct?

A No. It may be mentioned in a few paragraphs in one thing that I can think of, but there's no publication article on bank mergers.

Q You have never made any empirical studies relating to the relationship of bank market structure and performance?

A That is right.

[1225] Q Are you familiar with the sources of data relating to bank markets and market structure?

A Yes, I think generally I am, in connection with this case.

Q In connection with this case, you say?

A Yes.

Q Have you used them before this case?

A There's one instance in 1954 which I used similar data, but I have not worked primarily in this area and have not focused on it.

Q Prior to your testimony here, am I correct that you had never attempted to analyze the competitive effects of a bank merger? Is that correct?

A There is one exception in 1954. Apart from that—it would have been 1956—I'm sorry. Apart from that I have not.

Q You have testified, you said, before the CAB?

A That's right.

Q Involving what proposed merger?

A That was the—a proposed merger of Western Airlines and American Airlines.

Q On which side, so to speak, were you testifying?

A On the side of the parties proposing the merger.

Q Did the CAB prevent the merger?

[1226] A No, it did not.

MR. CLARK: I have nothing further.

BY MR. REYCRAFT:

Q Dr. Peck, what topics did you examine in preparation for your testimony here?

A I focused my attention on the effect of the merger on potential competition.

Q Did you have any statistical study carried out along these lines?

A Yes, I did. I had a statistical survey that involved 165 towns in Connecticut.

Q Was this study guided by the potential competition literature?

A Yes, it is. I think the statistical study is really more understandable relative to the definitions of potential competition that are used in the literature.

Q How would you define potential competition?

A Potential competition is the competitive effect on existing sellers created by the threat of entry. It really has, then, two elements, and it's important to keep both in mind, in my view. One is the competitive pressure on existing sellers; second, the focus of this is—or comes from the threat of entry of new sellers.

This is in contrast to actual competition, which is [1227] the competition between existing sellers.

Q How would you go about assessing—

THE COURT: Excuse me.

MR. REYCRAFT: Excuse me, sir.

THE COURT: Would you just read the answer.

(The answer was read by the reporter as above recorded.)

THE COURT: Would you explain the difference to me between element A and actual competition? I am missing something there. I would like you to explain it.

THE WITNESS: Yes. Yes, your Honor.

Start first with actual competition. That's the day-to-day competition between existing sellers. Now, what economists began to write about in the late '40's was that, in addition to a competitor having to be concerned with the competition of actual sellers, he also had to be concerned about new entrants coming into the market.

THE COURT: That is element B?

THE WITNESS: That's element B.

THE COURT: I understand that perfectly. What is element A?

THE WITNESS: It's—maybe I have obscured [1228] the issue by dividing it into elements A and B.

The important point is that it's competitive pressure on existing sellers by the threat of entry.

THE COURT: Thank you.

BY MR. REYCRAFT:

Q Dr. Peck, how would you go about assessing the effect of a merger on potential competition?

A Well, there are two methods in the literature. One is to place reliance on what some people call subjective factors, which is the testimony of bank officers about their entry plans and expansion plans. The second method is to focus on objective factors which are characteristic of particular entrants that make them more or less likely entrants.

I have—my testimony has focused on the objective factors, for two reasons:

First, it seems to me in many cases an economist can make a bigger contribution by focusing on these objective factors.

Second, I understand the government contends that objective factors should be important in assessing potential competition.

Q What are the major questions involved in making this assessment?

[1229] A Well, the one critical question is: How does the proposed merger affect the most likely or leading entrant? That involves considering the rank of the bank that's affected by the merger. That's one question.

A second way of looking at the problem is to ask: How many potential competitors are eliminated by the merger among a small group of firms that seem to be more likely entrants?

One is a ranking and the other is to look at the group as a whole.

A third kind of question is: How do the barriers to entry affect the significance of potential competition?

Q Dr. Peck, what are the ways in which a merger may affect a most likely potential entrant?

A Well, the merger could have the effect of eliminating the most likely entrant if, for example, the most like-

ly entrant was merging with a substantial seller—existing seller in the market. That would eliminate him as a competitive factor as a potential competitor. Another way would be if the two most—the first and second most likely potential competitors merged. Those would be two ways.

But the effect is really—of the merger is to—what you focus on is the effect of the merger on the potential competitors.

[1230] Q How would you go about defining a most likely or a leading potential entrant?

A Well, in a free enterprise economy, entry can come from a variety of sources. For example, a set of individuals could get together and form a new bank. However, the economic literature on potential competition focuses on the most likely entrants. The reason for this is a presumption that businessmen don't worry about possibilities but realize probabilities, and the—the key factors, then, in a potential competition are the most likely potential entrants.

Q How would you go about identifying the most likely potential entrants?

A A common proposition in economic literature is that larger firms are more likely entrants; therefore, size becomes an important criteria.

A second one which I think is important in an industry where it has retail characteristics—you are serving consumers—is geographic proximity of the potential competitor, so that's a second factor.

So size and geographic proximity.

Q Dr. Peck, did you limit your survey to commercial banks?

A Yes, I did. I did so because, as I understand it, [1231] the government contends that the appropriate line of commerce is commercial banking; and much of my testimony is devoted to analyzing and quantifying the various contentions of the government.

Q So you accepted the government's contentions for purposes of your analysis?

A That is right.

Q Does this limitation of your analysis imply any

conclusion on your part as to whether other financial institutions are in competition with commercial banks in the State of Connecticut?

A No, it does not.

Q If savings banks had been included in your analysis, what would the effect have been upon your conclusions in general?

A Well, I think that it is recognized that savings banks provide competition to commercial banks. I think it's a complex question, the extent of that competition, and I have not really analyzed that question. I've limited my survey to commercial banks.

Q All right.

A However, the fact that savings banks do provide some competition would mean that whatever I say here based on limiting it to commercial banks would be somewhat [1232] strengthened, if you like—the pro-competitive aspects—because there are savings banks in the background.

But I have not made an assessment of how important savings banks are.

Q Among commercial banks, how did you rank them as potential entrants?

A The—as I indicated earlier, size is an important objective factor; therefore, one of the rankings I made was to rank potential entrants by size as measured by deposits. All this says—that is, between two commercial banks—the larger one is a more likely entrant than the smaller one.

Q And you also consider geographic proximity?

A That's right.

The second criteria I used in my rankings was geographic proximity. All this says is, between two potential entrants, the one that is nearer is the more likely entrant than the one that is farther.

[1233] Q Did you consider any other so-called objective factors in your analysis?

A Yes, I did. I gave considerable thought to the plaintiff's answer to the defendants' interrogatory 18. If I can consult my notes, I will just read that.

The sentences that I particularly think are relevant here—I'm reading from Page 81 of their answer—that answer states—and I quote—"Such potential—potentiality of entry is based upon defendant's capability to enter as a significant source of new competition as indicated by defendant's size, financial resources, demonstrated willingness to expand by de novo branching and/or merger with smaller banks; an incentive to enter is indicated by the significant economic growth of the markets involved, as well as the geographic proximity and economic similarity of these markets."

THE COURT: Is that defendant s apostrophe or apostrophe s? Is he talking only about, in that interrogatory, CNB or both banks?

MR. REYCRAFT: I think the quote is singular, defendant apostrophe s. But I think that the government probably was referring to each one individually. I think they're talking about both of them, but it is in the singular form in the quotation I have here.

[1234] THE COURT: All right. Go ahead.

Well, why don't we straighten it out. You were talking about each bank, each of the defendants as a potential entrant?

MR. CLARK: That's correct.

THE COURT: Not just one?

MR. REYCRAFT: I think that's clear that that's Mr. Clark's position.

THE COURT: All right.

A Now, I would observe from this quotation as I read it, it refers to defendant's capability to enter. But the objective factors to identify—that are identified here seems equally applicable to any other bank that may be a potential entrant.

Q What are those factors, Doctor Peck?

A Well, let me enumerate them from the quotation. One, size. Two, financial resources. Three, demonstrated willingness to expand by de novo branching and/or merger with smaller banks. Four, incentive to enter as indicated by significant growth of the markets involved. Five, geographic proximity. Six, economic similarity of these markets.

Q Would you tell us how you considered size the first factor you identified in the plaintiff's answer?

A I considered that directly and made it one of the factors in my analysis. I measured size by deposits.

[1235] Q And what consideration did you give to the second factor, financial resources?

A I thought that this could be best approximated by assets. However, it turns out that among the first 21 banks in the State of Connecticut the ranking by assets and deposits is exactly the same. Therefore, when I was using deposits, I was also using assets which I treat as a proxy for financial resources.

Q And did you also use geographic proximity?

A Yes, I did.

Q And did you consider demonstrated willingness to expand by de novo branching and/or merger with smaller firms?

A I gave this consideration, but I did not incorporate it formally into my analysis.

The reason was this: That it seemed to me that the relevant thing—factor that's referred to in this sentence is the tendency of a bank to enter a new town. I then went back to 1954 and examined for each bank how many towns they were operating and made a similar analysis for 1971. That gave the difference between 1954 and 1971—represented the number of new towns which they expanded.

The reason I picked 1954 is—as I recall it in the government's answers—they speak of the expansion statewide at about that time. It turned out, however, that the [1236] tendency to move into a new town was very highly correlated with 1971 size. Therefore, when I took account of size, I was also taking account of demonstrated willingness to expand.

Sometimes in economics it is useful if you have two things that move exactly together, not to put each of them in separately, but rather to recognize that a measure of size is also a measure in this case of demonstrated willingness to expand.

The particular exercise I carried out was a rank correlation, which is a technical procedure that measures the

relationship. It seems to me that it is not a surprising result that bigger banks move into small towns than smaller banks.

Q Doctor Peck, did you also take into consideration the fact that the government considered significant incentive to enter as indicated by the economic growth involved?

A Yes, I would, although this plays a role later in my analysis.

Q Did you consider the sixth factor mention, economic similarity of the markets?

A No, I did not. I wasn't sure exactly what this meant or how it could be quantified, so I did not take it into consideration.

Q With the exception of that last factor, did you take [1237] into consideration all the—all of the factors mentioned by the plaintiff in their answer?

A Yes, I did.

Q Now, are these factors which the plaintiff described in their answers to interrogatory 18 in the following terms, quote: "Potential competition can be identified and quantified by examination of those factors described above"?

A Yes. I think that's a quotation from—I don't have it here in front of me, but from the next part of the answer to interrogatory 18. It does refer to that.

Q All right. Could you summarize the general approach that you adopted for your statistical survey?

A Yes, I can. In Defendants' 27 there is a data sheet for 165 towns in Connecticut, and that was the—that is where the bulk of the analysis is.

To develop these data sheets, I had to make several decisions. One was to—what the objective factors would be, which I have just discussed. I also had to make a decision as to what would be the geographical unit of analysis.

You will note that the 165 data sheets are for individual towns.

Q Why did you use towns as the geographic unit?

A It seems to me that in banking there are several factors that point to the use of the individual town. First,

[1238] in Connecticut the banking regulatory laws are written around towns rather than some other unit. Second, banking is an industry in which convenience plays a major role.

Now, recall that we're looking at the competitive pressures exerted by the threat of entry on existing banks.

Now, it seemed to me that, to take an example, the bank in Woodbridge is concerned about bank—about entry into Woodbridge, not into some other town in roughly the same geographical area. This is because many of its deposits come from the town itself.

For example, in the government's exhibits—show that over 60% of the First New Haven and Connecticut National branches draw their deposits from the towns in which they're located. Even for the depositors that do not reside in the town, it seems to me for many of them the particular location matters a great deal.

For example, visualize a teacher living in Branford that's teaching in the Woodbridge schools. She may have her bank account there, but the bank in some other adjoining town is not an appropriate substitute. The—I think that convenience is—the importance of convenience is demonstrated in one study that was done by the Federal Reserve Bank of Chicago, and it is the only study I know of of this kind, and it is limited to Indiana, which is obviously different than Connecticut, and a [1239] fairly small sample, but it does provide the interesting fact that 50% of the depositors visit their bank once a week or more, and almost all of them visit once a month. And it suggests with this frequency of visits convenience matters a great deal.

Q Did you give any consideration to using the standard metropolitan statistical areas as geographic units of analysis?

A Yes, I did. I concluded, however, it was not the appropriate unit.

Q Why?

A For the analysis of potential competition.

Recall that the emphasis is always on how the bankers in a community—the competitive pressures exerted by the threat of entry.

Now, if you take two towns in the same standard metropolitan statistical area, Woodbridge and Guilford, it seems to me that a banker in Woodbridge would not be very concerned about a new entrant into Guilford. For one thing, there is 45 minutes to an hour's driving time that separates them. For another, there are seven banks with 39 offices in the towns between Woodbridge and Guilford.

Yet, these two towns are in the same standard metropolitan statistical area.

It seems to me with that kind of situation, a [1240] Woodbridge banker would not be very concerned about an additional bank coming into Guilford when he first recognizes the driving time and second recognizes the fact that if depositors are not very interested in a nearby location, they already have a substantial number of alternatives in the towns that intervene.

Q Did you consider using the entire State of Connecticut as a geographic unit for analysis of potential entry?

A Yes, but it seems to me that this leads to perverse results, because this would say that any bank in—banker in Connecticut is concerned about an entry of any other bank anywhere in the State, in Connecticut.

However, I know there's interest in the entire State, and for that reason I extended my analysis to the 165 towns.

Q All right. Doctor Peck, how did you use size and geographic proximity in your analysis?

A Well, the—they were used in the data sheets for—which were compiled in Defendants' Exhibit 27. The data sheets show, first, whether a town is open or closed. And for this I relied on the Bank Commissioner's report, as well as the government's answers to defendants' interrogatories.

The data sheets also show the 1970 population, which is from the 1970 census. The data sheets also show the population per bank office, which is simply dividing through the population [1241] by the number of offices, so it would be all the branches that operate in the town.

The data sheets go on to show each of the banks that is now operating in that town, and they are the existing competitors or existing sellers.

Now, all—since the survey is limited to commercial banks, all the potential entrants are the remaining banks that don't operate in that town that are in the State of Connecticut.

But, recall my survey is—focuses on the most likely potential entrants. Therefore, two rankings were carried out. The first is to list all the banks that are not now there by their size, that is: number one, the biggest bank that's not now there, number two, the second biggest bank, and so forth, and here we relied on the deposits as of year end '71, I believe.

Q And what did you—excuse me.

A I'm sorry, Mr. Reycraft.

Q I was going to ask you what you did with geographic proximity.

A With respect to geographic proximity, we rank the banks putting the nearest one as the highest geographic proximity, the next nearest one, with the second ranking; the rankings on both size and geographic proximity are limited to the ten biggest and the ten closest, because the theory of potential competition focuses on the most likely entrants.

[1242] The ranking by geographic proximity was a little complex than by size; in the case of size you simply look up deposits. In the case of geographic proximity, the analysis is done as follows: The mileage distance from the center of town, the center of town was treated as the distance, so we don't have the exact number of miles for each branch. A bank was counted if it operated a branch in a nearby town.

Now, if you had a town that—in which there were two or three banks with branches, the largest bank was assigned the higher entry. So that to break ties, if you like, in geographic proximity, size was used as a variable.

Now, these rankings, particularly those on geographic proximity, were done under my supervision and direction by Mr. James Terzakis, who is a vice-president of the First National Bank.

Q Doctor Peck, I notice that your list includes only ten potential entrants under both size and geographic proximity, and can you tell me why that is?

A That is because the focus of the literature on potential competition is on the more likely entrants and, therefore, it seemed pointless to go beyond ranking ten.

Q Did you take into account in your geographic proximity rankings of all banks, regardless of their size?

A That's right. A bank was ranked in the geographic [1243] proximity even if it was relatively small. This is because the smaller banks do expand into nearby towns. For example, the Orange National, which is 34th in size, operates in three towns, and the Citizens Bank and Trust, which is about the same size, operates in three towns.

I recognize, however, that when you are talking about the larger towns, smaller banks, even though they might not be important—as important, so even if they're nearby, the fact the town is larger means size may matter a little more. Therefore, I did a separate analysis of larger towns in which size was treated as the major variable.

Q And how was the potential entrant affected by the consolidation determined?

A You can imagine several cases here. First, suppose one of the defendant banks was operating in a town, then the effect of the merger is to eliminate the other bank as a potential entrant. That is: suppose Connecticut National were operating in town A, and First New Haven was—is on our list of potential entrants, then, the bank that's affected by the consolidation is the First New Haven, and vice versa if it's the other two banks.

Now, suppose that neither bank is operating in the town, then, with respect to geographic proximity, the assumption is that the merger eliminates the farther bank. Suppose the [1244] Connecticut National is in the next town and the First New Haven is a considerable distance away, but still among the top ten, then the assumption of the analysis is that the merger eliminates the farther bank, because a consolidated bank succeeds to the close-by office, if you like, and it is there is a

potential entrant in the nearby town. What is lost by the merger is the more distant potential entrant.

In the case of size, the assumption was that the merger eliminated the smaller bank. That is: if both Connecticut National and First New Haven were potential entrants, since First New Haven is smaller, that would be the bank eliminated by the merger, as a potential competitor.

Q If one of the defendant banks was already in one of the towns you analyzed, what did you do about that?

A If one was in?

Q Yes, sir.

A Well, suppose—I think that's—I was going to say that I think I gave one of the examples of that, but let me repeat another one.

Suppose the First New Haven were operating in a town and Connecticut National was not, then the merger would eliminate the Connecticut National as a potential competitor.

Q Doctor Peck, what would be the greatest effect the merger might have upon potential competition in this kind of analysis?

[1245] A Well, the greatest effect would come in the following situations: Suppose that the Connecticut National were operating in a town and the First New Haven were the most likely entrant by size or geographic proximity. Then the merger would eliminate the highest ranked potential competitor.

That would be the greatest effect we would have, that would show up as a number one elimination, if you like.

The second case—would almost be comparable to that is—suppose that the First New Haven were the—First New Haven were the number one entrant and the Connecticut National the second potential entrant. Then the merger would eliminate the—by my analysis, the second ranked potential entrant.

Q Did you adopt any method to combine the ranking by geographic proximity and the ranking by size?

A No, I did not. I consider both of them important, but I don't know of any objective way to weigh size versus geographic proximity. Therefore, I computed tables that show size separately, and then a table which cross

classifies, to see the combined effect of size and geographic proximity.

Q Did you take account of the possible difference between large and small towns?

A Yes, I did. I did a separate analysis of towns—the 15 towns of over 50,000 population.

[1246] Q Did you do this for all towns of Connecticut?

A Well, the entire analysis in Defendants' Exhibit 27 deals with 165 of the 169 towns. The four towns omitted are those in which there is—I understand the government contends there's an effect on direct competition or actual competition.

Q And have you omitted those towns from the analysis?

A I have omitted those towns throughout my analysis.

Q The statistical analysis approach deals with rankings of potential entrants, and you mentioned a second kind of way or approaching the effect of the merger upon potential entrants?

A Yes. Another way that is found in the economic literature is to consider that there are a small group of potential entrants who have characteristics that make them more likely than all other firms in the industry.

Q And how does this approach differ from the ranking approach?

A Well, the—the second approach, which I will call, let's say, the small group approach, stresses: what does the merger do to the number of potential entrants in that small group? The ranking approach stresses the rank as the difference between the sixth and seventh potential entrant.

Q In analyzing this merger, what would be the group of [1247] firms that might be distinguished by ease of entry?

A Well, for that analysis, I relied on the answers of the government which distinguished out ten banks that either operated on a statewide basis now or were capable of independently expanding into statewide systems.

Q Are those the banks identified in the government's answer to interrogatory 18, part L?

A That's right.

Q Apart from the government's identification of these banks as capable of independently becoming statewide systems, do these banks have other characteristics in common?

A Yes. They are now the ten largest banks in the State.

Q You have referred to a third question, barriers to entry. Could you describe what barriers to entry are?

A That is a term economists use to describe the cost disadvantage which a new competitor labors under compared to existing competitors.

Q And what significance do barriers to entry have in analyzing potential competition?

A Well, if they're fairly substantial, meaning the cost disadvantages are extensive, then it serves to discourage new entry because a new entrant has a higher cost than the firms with which he has to compete. That acts to discourage [1248] entry, make it less of a competitive threat, because it is less of a competitive threat, it means that potential competition is less of a competitive influence on existing sellers.

Q In other words, if entry barriers are high, existing firms will be less likely to be concerned about it?

A That's right.

Q About threat? Are entry barriers high in commercial banking?

A Well, there are the costs of of branching which are analogous to the cost of establishing new plants. However, the distinguishing factor, it seems to me, in banking is that regulatory approval is required to enter a new area.

Q And is that a barrier to entry?

A That's right. In the sense that because regulatory approval is required it means that the chances of entry are somewhat less.

Q And how does that affect potential competition?

A Well, the fact that these potential competitors must pass through the regulatory gate means that they are less of a competitive—pressure on existing sellers.

Q In developing the three issues that you have testi-

fied about, did you rely on the general economic literature on potential competition?

A Yes, I did. I also took particular note of the [1249] statement in the—of the Solicitor General in the Greeley case which is now before the Supreme Court, because it seems to me there were two sentences there that were helpful in determining how I could make my analysis.

Q And what were those statements in the Solicitor General's brief?

A Well, on the—Page 21 of the printed brief, looking here in my notes, it states that the elimination by acquisition of one of the leading potential entrants into the market can have a significant competitive effect on the existing market structure.

Now, the term "leading potential entrants" implies to me that a ranking is required to see how that applies to this particular situation.

The sentence that immediately follows that suggested to me some analytical basis for the group analysis, because that sentence says, and I quote, "And this is particularly so whereas here there are extremely few firms which have the incentive and capability to introduce a significant new competitive factor into the market."

So that these two sentences, along with the general economic literature, divided my analysis, I don't want to attach undue importance to those two sentences, but I think they're the clearest statement I have seen that—particularly relevant to bank mergers.

[1250] Q The Solicitor General was describing the situation in Colorado in that brief, is that correct?

A That is right.

Q Doctor Peck, would you summarize the way in which you divided the towns into groups for purposes of your analysis?

A Yes. I divided—considered, first, the towns with more than 50,000 population. There are 15 such towns.

Second, the town—the towns—the other size extreme, which are extremely small, that now have no bank. Then I considered towns in which the geographic proximity rankings would be changed by the defendants' proposal

to sell branches, and then I considered the open towns and then the closed towns.

Q Turning to the group of towns with over 50,000 population, which is the largest?

A Hartford.

Q Would you take a look at the data sheet on Hartford in Defendants' Exhibit No. 27?

[1251] BY MR. REYCRAFT:

Q Could you explain the entries on the data sheet for Hartford in Defendants' Exhibit No. 27?

A Yes.

This is the same form that's used for all 165 towns. At the very top of the page it simply indicates whether the town is opened or closed, states the population, population for bank office, the banks already in the town. The number after each bank is the number of branches that operate in that town. Then the potential entrants are ranked by size, with their name indicated and their size and deposits.

THE COURT: Excuse me, Doctor, before we go any further.

These are all commercial banks?

THE WITNESS: These are all commercial banks.

THE COURT: As of what, 1971?

THE WITNESS: As of year end '71.

THE COURT: Go ahead.

A (Continuing) The data is from the Bank Commissioner's report.

THE COURT: All right.

Q Dr. Peck, would you explain the entries in terms of the ranking of the potential entrants by size?

A Yes.

[1252] The rankings of the ten banks are simply the ten largest banks that are not now in the town, which are potential entrants, and it ranks them by size, because I consider size to be a factor. The larger the bank, the more likely it is a potential entrant; thus, Union Trust is the biggest bank that does not now operate in Hartford and it's ranked number one, State National's number two, and so on.

Q What is the effect of the proposed merger on this listing, theoretically?

A Well, it has the effect of eliminating the First New Haven as a potential entrant. That is the fifth largest bank in this listing.

Q How many banks would remain as more likely potential entrants than the First New Haven by the size criteria, based on the data as of the date that it is set forth in this exhibit?

A There would be four larger banks.

Q Assuming that the merger takes place, how many potential entrants capable, according to the government, of developing into statewide banking systems would remain?

A There are seven before and six after the merger.

THE COURT: I am sorry. I was with you so far; now I have lost you.

Explain that and how you get that from this [1253] chart, or didn't you get all of that from looking at this chart?

THE WITNESS: Well, I did from—I did, but I have to apologize. In the typing, we thought we'd identify each of the larger banks with a small s, indicating it's large, and it seems to have not survived the typing process.

What you can do, your Honor, is to—there are ten banks that are of that size, and I simply looked at how many were there before and how many were there after. For example—

THE COURT: Excuse me, maybe I was not—

THE WITNESS: You can't get it from the chart because, your Honor—not from this data sheet—you have to know the banks to get the answer to that; and the problem to which I apologize is that in the typing the distinguishing—we were going to put an "s" after each one, indicating it was a possibility of statewide, but somehow they got lost. And that could be marked.

THE COURT: How did you arrive at your conclusion of the possibility, regardless of whether there is an "s" here or not?

THE WITNESS: Sure, sure. The government [1254]

states that there are ten banks that are capable of statewide operation.

THE COURT: Oh, that is in the answer to one of their interrogatories?

THE WITNESS: That's right.

MR. REYCRAFT: That is where it comes from.

THE WITNESS: I did not go behind the answers to determine independently whether that was correct or not.

THE COURT: Now I am with you.

Go ahead.

BY MR. REYCRAFT:

Q Dr. Peck—

THE COURT: Excuse me.

In other words, this was not your conclusion, there are ten banks that now could go statewide?

THE WITNESS: No.

THE COURT: You are taking the government's answers on that?

THE WITNESS: That's right.

THE COURT: All right, now I see it.

Go ahead, Mr. Reycraft.

Q Dr. Peck, are there any particular factors that make Hartford attractive for entry by a bank?

[1255] A Yes. It is the center of the insurance industry, which is an entry that tends to generate substantial amount of deposits. It's also the State capital. I think some banks might find it attractive to have representation in the State capital.

Q Are there any particular factors that tend to make it unattractive?

A Well, there is the fact that it is a closed town.

Q How does that affect entry?

A The fact that it is a closed town precludes entry by de novo branching, which is the traditional way in which banks have expanded in the State of Connecticut.

Q Are you aware of the fact that the government contends that entry is possible into closed towns by chartering a new bank, forming a holding company and hav-

ing the holding company acquire that newly chartered bank?

A Yes, I am aware of that contention.

Q Have you made any investigation to determine whether this has ever occurred in the State of Connecticut?

A It has not occurred in the State of Connecticut.

Q Does this fact have any significance to you, as an economist?

A Well, it seems to me that if a particular form of expansion has never been used, it suggests two things to me [1256] as an economist: one, that it must be more expensive than other forms of expansion; second, it must be—or is likely to be more risky either legally or economically.

Q Does it suggest anything to you as to what consideration firms in the market might give that form of entry in determining their competitive behavior?

A Yes. A form of entry that is—has not occurred, it seems to me, is going to be less of a factor which firms now in the market will reckon with. As I indicated earlier, existing sellers are concerned with—not so much with possibilities but realistic probabilities; and this is a form of entry that's never occurred. So therefore, it seems to me, they give it less—less weight.

Q Dr. Peck, among the potential entrants ranked by size in Hartford, which is the largest?

A The Union Trust.

Q Would it be possible for one of the potential entrants to enter Hartford via merger?

A I—assuming regulatory approval, yes, it would.

Q How many banks that have not been identified by the government as capable of developing into Statewide systems are available for acquisition in Hartford?

A There are three such banks: the Charter Oak & Trust, the South End Bank & Trust and Constitutional National.

[1257] Q Do you have an opinion as a matter of general theory as to what influence the fact that there are only three banks available for acquisition in Hartford would have on their price?

A Yes.

In a market where there are only three possible sellers, it seems to me, that would drive the—or increase the premium that a seller could extract.

Also, when you are talking about such small numbers, there's a substantial chance that no particular bank would—of those three—would be eager to sell at any one moment of time.

Q How would that affect a likely entry into Hartford?

A Well, it would tend to discourage it, because this route is more expensive than there would be if there were a substantial number of banks for sale.

Q Dr. Peck, referring now to the geographic proximity data on your exhibit, would you explain that?

A Yes.

That ranks the ten closest banks that operate branches. Let me make clear that "closest" here means operating a nearby branch, not necessarily the head office. And it lists them, as you can see up there on Defendants' Exhibit 27, the Hartford data sheet.

[1258] Q Based on your analysis, is it your opinion that the proposed consolidation may have the effect of substantially lessening potential competition among Hartford banks?

A I conclude that it would not significantly lessen potential competition. I base this conclusion on two factors:

One, that before the merger there are seven banks identified by the government as capable of statewide operations available as potential entrants. After the merger there are six. The change from seven to six does not seem to me to make a major difference in the competitive threat on existing sellers provided by entry.

Second, the merger eliminates the fifth-ranked entrant by size, so that there remain four larger banks available as potential entrants.

Q What is the impact of the fact that Hartford is a closed town and that there are only three small banks available for acquisition?

A That would reduce the significance of potential competition further, but that's not the basis of my con-

clusion; but it's an additional factor pointing in the same direction.

Q In connection with reaching your conclusion as to Hartford, did you carry out any detailed studies of Hartford [1259] or discuss any of these questions, availability of banks and so forth, with bankers in Hartford?

A No, I did not. I limited my analysis to the objective factors I have identified here.

Q Is this true for the other towns you studied?

A Yes, it is.

Q Dr. Peck, what is the second largest town in your survey of potential competition?

A Bridgeport.

Q Would you turn to the Bridgeport data sheet in Defendants' Exhibit No. 27.

Do you have that sheet?

A Yes, I do, Mr. Reycraft.

Q Dr. Peck, what is the rank of the potential entrant by size that would be affected by the consolidation?

A It is third-ranked in size. There are two potential entrants that are larger, the Hartford National Bank and the Union Trust Company.

Q How many of the ten largest banks identified by the government as potential statewide banks are available as potential entrants before and after the merger?

A There are six before and five after.

Q What was the rank by geographic proximity affected by the consolidation?

[1260] A It's the First New Haven, which is the fifth-ranked bank by geographic proximity.

Q In other words, there are four other banks that operate branches closer to Bridgeport than First New Haven?

A That's right.

Q Are there any special features of the Bridgeport area that you took into consideration?

A Well, there's the fact that, as the data indicates, it's a closed town.

Q What effect did that have on your view?

A As I indicated in my testimony about Hartford, the fact that a town is closed means that the easiest mode

of entry historically, de novo branching, is illegal under Connecticut bank laws.

Q You have testified earlier that the de novo charter route has never been tried in the State of Connecticut?

A That is right.

Q What other method of entry is available for entry into Bridgeport?

A There would be the possibility of merger with one of the small banks.

Q How many banks which are not among Connecticut's ten largest banks operate in Bridgeport?

A There is one bank, Lafayette Bank & Trust, which [1261] is not among the ten largest. There is also one additional bank that is not shown in the data sheet, which is James Staples Company, which is the state's sole private banker. That would mean, if a private banker's equivalent to acquiring a commercial bank, there are two potential acquisitions available.

Q Assuming that there are two possible acquisitions available in Bridgeport, how would that fact affect entry, in your opinion?

A Well, the fact that there are only two banks available suggests to me as an economist that they would be able to extract a premium in merger negotiations, and that would make the price of entry through merger of these banks higher than it would be otherwise.

There's also the fact, with only two banks available, the chances that either would be interested seriously in sale at any one moment of time might be less than if there were ten or twelve.

Q Does that, in your opinion, have an impact on competitive behavior of firms in a market who are considering the threat of potential entry?

A Yes. I think that because there are so few banks available, the threat through merger's a lot less than it would be if the number of banks were greater.

[1262] Q Are there other factors in Bridgeport which you have taken into account which would, in your opinion, affect entry?

A Yes. There is the fact that Bridgeport, the City of Bridgeport, is a relatively slow growth area. I com-

piled a table on that point, which is Defendants' Exhibit 28, and that shows that in various economic indicators Bridgeport has grown a lot more slowly than the State of Connecticut.

Q Dr. Peck, I notice that D-28 shows different years for various items.

Can you explain that?

A Yes.

The data are from the census of manufacturers and the census of business. The census of population reflects the two latest censuses in each case, but they happen to be taken in different years. All the entries bear on the question did Bridgeport grow as fast as the rest of the State of Connecticut.

Q Would you refer to the specific items on D-28 and indicate those which you think affect the attractiveness of Bridgeport as a market to enter.

A Well, looking at the first item, that's all the retail sales made in the City of Bridgeport, and that grew [1263] at 8.5 percent over the period 1958 to 1967. In the State of Connecticut generally the growth was 62.5 percent, again a slower rate of growth.

Wholesale sales, which is the next item—actually, Bridgeport did keep pace with the State of Connecticut.

Q How about total employment?

A Total employment. Let me explain that is the—the employment of Bridgeport residents, not jobs in Bridgeport. It's the entry you find in the census under "Total employment for Bridgeport," but it is, in fact, the employment of Bridgeport residents rather than jobs there.

The employment grew in Bridgeport—employment of Bridgeport residents only—by 3 percent, whereas in the rest of the state employment grew by 25 percent.

The next item is—measures employment in a different way, though only for manufacturing. That is the number of jobs in Bridgeport—that is, jobs in—in Bridgeport manufacturing firms—and that grew at a slower rate again than for the whole State of Connecticut.

Q What do the population figures show between the

years 1960 and 1970 for Bridgeport as compared to the rest of the state?

A The population for the state grew at about—[1264] grew at 19 percent, whereas the population of Bridgeport was essentially stable.

Q How, in your opinion, do these factors affect the attractiveness of Bridgeport as a prospect for entry by a bank?

A Well, recall that in the government's statement of objective factors they mentioned significant economic growth. This is a record of growth much lower than the rest of the state. The slow growth is a characteristic of many central cities. The fact that the Bridgeport area, itself, grew slowly, seems to me, would make entry less attractive, particularly for de novo entry, either by branching or by chartering a new bank. The reason for that is those kinds of entry, the new entrant starts from scratch, and he has to acquire new deposits. That is easier to do in a growing market than it is in one that is fairly stable.

On the other hand, I think one should be careful not to attach—overstate the significance of this table in the sense that I recognize that the suburbs around Bridgeport have been growing. That has some positive effects, some possible spill-over, if you like, for Bridgeport, but not as much as if Bridgeport—if the City of Bridgeport, itself, were growing.

It's also true that there are some kinds of [1265] medium-sized commercial businesses that are centered in Downtown Bridgeport in which entry into Bridgeport would be necessary to serve them effectively.

Q Have you reviewed the government's answer No. 14-C on page 60 of the answers, referring to the contention that the Bridgeport standard metropolitan statistical area is a growing area?

A Yes, I have, and this table doesn't contradict that in any way. The government is totally right on that.

It does point out, however, that most of the growth has been in the suburbs.

Now, it is—it is true that growth in the suburbs can help the central city, as I have indicated; however, I think it's important to recognize that the growth in

the suburbs has not just been of commuters—jobs have expanded in the suburbs; and, second, the suburbs have become attractive centers of retail trade. So that, in fact, central city residents have been known to drive to suburban shopping centers to do their shopping.

Q How about suburban retailers and manufacturers borrowing in Bridgeport?

A That's certainly a possibility, although, if a businessman is moving outside of his town, he's also likely to go not only to the nearest central city but also consider [1266] other central cities as a possibility.

Q So he has a broader market for his banking services?

A That's right.

Q Are there any other special factors in Bridgeport that would bear on entry?

A Well, it is a town in which four of the state's biggest—the ten biggest banks—state's ten biggest banks—operate; therefore, they're available as existing competitors, and that would—might discourage some banks from entering that market.

Q Does a bank have a greater influence on competition as an actual competitor in the market or as a potential competitor?

A It has a greater influence as an actual competitor. It's available day to day to exercise competitive pressure on other sellers, whereas, as a potential entrant, it's a more remote threat; and, therefore, a bank has a greater influence if it's an actual competitor on the—on competition than when it's a potential competitor.

Q In your analysis of the Bridgeport data, did you reach an opinion as to whether the proposed consolidation may have the effect of substantially lessening potential competition in Bridgeport commercial banking?

A Yes, I reached an opinion.

[1267] In my view, this would not have a substantial effect on potential competition.

Again, it is a case in which there are five banks that the government identifies as capable of statewide operation after the merger; there were six before. It is a case in which, while the merger does eliminate the third

largest entrant, potential entrant, there remain two banks that are larger. It also eliminates the fifth ranked in geographic proximity, but there are four closer banks.

Taking these facts into account, this does not seem to me a significant change that would have a significant impact on potential competition.

Q Is your conclusion based in any way on the fact that Bridgeport is a closed town?

A No, it is not, although, again, that would have the effect of reducing the significance of potential competition.

Q Is it based on the fact that Bridgeport has had a relatively slow growth rate compared to the rest of the state?

A No, it is not. It rests primarily on the structure of potential competition before and after the merger. It is a fact that it would have some modest effect of reducing the significance of potential competition.

Q Did you conduct any market analysis of Bridgeport other than what you have described in your testimony, or [1268] did you conduct any interviews with bank officers in the area or bank customers in the area?

A No, I did not. This is an analysis that rests on objective factors which I have identified here.

Q As described by the government in their answers?

A That's right.

Q Dr. Peck, what is the third largest city in the State of Connecticut?

A New Haven.

Q Would you turn to the data sheet on New Haven which is contained in Defendants' Exhibit No. 27.

What is the ranking of the potential entrant by size that is affected by the consolidation?

A It is the Connecticut National Bank, which is second in the potential entrants' rank by size.

Q How many potential entrants identified by the government as independently capable of expanding into statewide banking systems would remain after the merger?

A There are five before the merger and four after the merger.

Q What is the ranking by geographic proximity of the potential entrant affected by the merger?

A It is the fourth closest bank.

Q Is it your view that for a large town such as [1269] New Haven geographic proximity may be somewhat less important than for a smaller town?

A That is right.

Q Are there any special factors that would make New Haven less attractive to de novo entry than many other towns in Connecticut?

A Well, there are two factors that are identical to those of Bridgeport. First, it is a closed town; and, second, the town itself has grown slowly.

Q Would your conclusions as to the impact on competitive behavior in New Haven from the possibility that someone might form a holding company and charter a new bank be the same for New Haven as they were in Bridgeport?

A Yes, they would.

Q Have you given any consideration in your testimony to the possibility that entry by de novo charter is more expensive than de novo branching?

A Yes, I have. I rely here on the testimony of Mr. Hawley, who indicated that a de novo charter—

MR. CLARK: Your Honor, I object to his reliance on other testimony. The testimony speaks for itself. If he has no other basis for that opinion, I do not think it is proper.

THE COURT: Of course, if he has formed an [1270] opinion, which he says he has, he can rely on hearsay, rely on other people's works, to form the basis of part of his opinion; but, if his entire opinion is based on what somebody else has already told me, he can just tell me "I have taken that expert's word" and then we can proceed; and I will give it that much weight.

MR. REYCRAFT: He has simply relied on Mr. Hawley's testimony, which is a fact in the evidence in this case.

THE COURT: That goes to weight and not admissibility.

We will take a five-minute recess.

(Recess)

[1271] BY MR. REYCRAFT:

MR. REYCRAFT: Your Honor, I'd like to assure everyone that we're not going to go through all 169 towns of Connecticut, although we have the data sheets for all of them.

Q Doctor Peck, how does the fact that New Haven is a closed town and entry might be possible by de novo charting affect potential competition?

A It's effect would be similar to the other towns I discussed. Hartford and Bridgeport. That is to say, it would serve to discourage entry because the easiest form of entry is illegal under State of Connecticut banking laws.

Q Have you considered the possibility of merger into New Haven?

A Yes, I have. However, I note that the only bank available for acquisition is the—the smallest bank available for acquisition is the Second National, which is one of the ten—the tenth largest bank in the State.

Q How does the fact that there is only one bank available for acquisition potential affect the expense of entry through merger?

A Well, it raises it very much. This interacts with the fact that this is a very large bank. Which would also raise the expense of acquiring it.

[1272] Q Are there any other significant factors in New Haven that affect entry, in your opinion?

A Well, as I indicated, I think just before the recess, it is like Bridgeport in that it is—the central city itself is a—has a slow rate of growth compared to the rest of the State of Connecticut.

Q And have you prepared a table on this point?

A Yes, it's Defendants' Exhibit 29.

Q And what does that table show?

A It is constructed similarly to the one for Bridgeport, has exactly the same entries. It shows that New Haven has grown much more slowly than the rest of the

State, indeed, the difference here is greater than it was in the case of Bridgeport.

Q Would you go through the various factors that are included on D-29?

A Yes, I would be glad to do so.

All retail sales grew from '58 to '67 by 17% in New Haven, 62.5% in Connecticut. Much slower rate of growth.

All wholesale sales grew by 25% in New Haven and 58% in Connecticut, that's in contrast to Bridgeport where the wholesaling activity expanded. I think that's probably because there's been an expansion of wholesaling in some of the suburbs, particularly the areas along the railroad tracks in [1273] North Haven. Total employment is down in New Haven as employment of New Haven residents, total employment grew in Connecticut.

Manufacturing employment is really quite striking between '63 and '67, there was a 25% decline in number of manufacturing jobs in New Haven, whereas they grew by 14% in Connecticut.

THE COURT: Doctor, may I ask you this: Apparently there's a rule in law of economics that the more entrants into a market, however, defined, have procompetitive effects, right?

THE WITNESS: Right.

THE COURT: From your knowledge and experience and expertise in the general field, do the effects start to level off when the number of entrants are—is such that new entrants really don't make very much difference? For example, take town A, let us just assume for the sake of argument, that there are ten banks in town A, it's a small town, and somebody said to you—well, if an eleventh bank goes in there, what do you think the effect will be?

Your answer would be, theoretically, it would have a procompetitive effect, because instead of ten banks, there are eleven. But as a practical [1274] matter, those ten banks have done such a job in that small town that realistically another bank isn't going to help the consumer or the small businessman or anyone else, because the ten

banks have got things on a pretty good level of competition.

In other words, what I'm saying is: is it an absolute rule that the more entrants into a market always has a procompetitive effect, or do the amount of entrants already in the market level off the effects of competition?

Do I make myself clear?

THE WITNESS: Very clear, your Honor. The general proposition is that the fewer the number sellers already there, the more an entrant matters. For example, if there's two banks there now, a third entrant counts more than if there are eight banks there now and you get a ninth entrant. At some point, which will vary with the characteristics of the industry, you reach a point which economists have called pure competition, where if you have got a thousand sellers, the thousand and first really matters not at all, and you really reach that point in which lower numbers than I may have suggested in a thousand and a thousand and one, so the general proposition [1275] is the fewer number of sellers already there, the more a potential entrant matters.

THE COURT: But there is a point—

THE WITNESS: That's right.

THE COURT: —where—even in theory—where another entrant really, as a practical matter, won't make that much difference, and in economics it's called pure competition?

THE WITNESS: Pure competition, that's right, your Honor.

THE COURT: What is the definition of that?

THE WITNESS: Well, the definition is that there are so many competitors that each one regards the actions of its rival as insignificant. That is: —the classic case that's used in textbooks is wheat farming where there are so many wheat farmers that—whether the number halves or doubles, it doesn't make any difference, because each competitor realizes the price is set by so many different sellers and influences that the number of competitors is immaterial.

It could have a more technical definition, but I think that is as good an approximation as the literature says.

[1276] Q Doctor Peck, do you reach any conclusion as to what the fact that growth in New Haven has been slower than the rest of the State, that is: the implications that these facts have on entry?

A Yes. The conclusions are similar to Bridgeport, except that New Haven has kept pace much less than Bridgeport with the rest of the State of Connecticut. Slow growth in the immediate town, seems to me, discourages entry, particularly by de novo chartering or de novo branching, because a new entrant has to take a share of the market that is not expanding rapidly.

I don't want to overlook the fact that growth in the suburbs can have some positive effects on entry into a place like New Haven, but it is true that the bulk of the retail customers have located themselves in the suburbs, there are a lot of jobs in the suburbs now, a lot of shopping in the suburbs, so that the slow growth in New Haven does have a negative influence on entry.

Q Doctor Peck, have you reviewed the plaintiff's answer to interrogatory 11, which is as follows: The New Haven SMSA is third most populous SMSA in Connecticut, it has a growing population and economy which can support additional banking offices and which will require additional banking offices in the future"?

[1277] A Yes, I have. I think that the only point of my—the table I have compiled is not to dispute the facts that are well demonstrated by the government's exhibits, but simply to highlight what has not appeared from their —all of their—all of the exhibits, it seems to me, that the central city is growing very slowly and the bulk of the growth in Connecticut is in the suburbs.

Q All right. And would that growth tend to provide business for banks in the central city?

A Well, there would be some spill-over. As I indicated in the case of Bridgeport, it is still as not a favorable situation if there was also growth in New Haven itself. There is also around a city like New Haven a medium-sized business community that's best served from the center of the downtown, so that while the slow growth in the city is offset to some extent by the growth in the

suburbs, it isn't as favorable a situation as if the growth were right in the central city itself.

Q Have you taken into consideration a possibility that suburban retailers and manufacturers might do their borrowing, or some of it, in downtown New Haven?

A I have, indicating the medium-sized businesses in my previous answer. However, to the extent a businessman goes outside his own town, he may well go to—not necessarily the [1278] closest central city, but another central city in Connecticut, or if he were large enough, outside the State of Connecticut—

Q Other than—in addition to the population, employment and sales trends that you have referred to, are there any other special factors in New Haven that bear on entry?

A Well, it's a closed town, and there are—that means that it's—entry, apart from merger acquisition, would be through de novo chartering.

Q And have you considered the fact that five of the State's largest banks already operate in New Haven?

A That is right. It is similar to Bridgeport, only a little more so, in that the largest banks are already present. They—if—they would otherwise be available as potential entrants, but here they're already there, here they're already in New Haven, some of the other banks in other towns are potential entrants, so the five biggest banks are operating in the City of New Haven now.

Q Could you draw any kind of a general conclusion concerning the impact upon competition, or competitive behavior, in the City of New Haven from the fact that the five largest banks in the State are already there as compared to the threat of the possibility that someone else might enter the town?

[1279] A Well, the—the—a bank has more impact on competition if it's an actual competitor than if it's a potential competitor.

Here, as in Bridgeport, we have some of the banks that otherwise would be potential competitors actually there. And in my view, an actual competitor is more important than a potential competitor.

Q Doctor Peck, do you consider that the proposed consolidation would have the effect of substantially lessening potential competition in New Haven commercial banking?

A I consider that it would not significantly lessen potential competition. I rely on the fact that before the merger there were five banks available as potential entrants capable—identified by the government as capable —of statewide operation; after the merger there are four.

It seems to me the change from five to four is not of major significance of the effect of potential competition, it is, in this particular merger, I also note that the merger does eliminate the second ranked potential entrant by size, but there remains one larger potential entrant, the State National, as a possibility. Although those two banks, I should point out, are very close to one another in size.

As far as geographic proximity, the Connecticut National is fourth, there are three closer but smaller banks [1280] available.

Given these facts, I conclude that the merger would not have a significant effect on potential competition.

Q Does this conclusion that you have just expressed rest on the fact that New Haven is a closed town?

A No, it does not, it rests on the facts I have enumerated in my answer.

However, the fact that it is a closed town reduces the significance of potential competition because it creates a higher barrier to entry.

Q And does it rest on the relatively slow growth rate of New Haven compared to the rest of the State?

A No, it does not. I think it again has some significant effects on entry, but it's offset to some extent by growth in the suburb, these are additional facts that point in the same direction, but they're not the primary facts that I relied on.

Q And would I be correct in assuming that as in Bridgeport and Hartford you did not conduct any specific market surveying, nor did you interview bank offi-

cers or customers in New Haven in connection with this matter?

A You would be correct in that assumption.

Q You have limited your conclusion to what we have referred to as the objective factors?

[1281] A That is right.

Q Doctor Peck, did you prepare data sheets similar to those for Hartford, Bridgeport and New Haven for all towns of over 50,000 in population?

A Yes, I did.

Q And how many of those are there?

A There are fifteen.

Q Could you summarize the data for the 15 towns over 50,000 in population?

A This is summarized in Defendants' Exhibit 30.

Q And what does that exhibit show?

A That shows for these 15 towns the number of banks that are identified by the government as capable of expanding into statewide systems, which remain as potential entrants in the 15 largest towns after the merger.

On the left-hand side the number of banks remaining, and on the right-hand side the number of towns. In no town is there simply one of those banks remaining, in no town is there simply two, in no town is there simply three.

There are three towns in which four such banks remain as potential entrants after the merger. The most typical case is that there are six such banks remaining after the merger.

Q In your opinion, does the proposed consolidation have [1282] the effect of creating a tendency toward a substantial lessening of potential competition in any of these towns?

A No, it does not. Because in every case there are four potential entrants remaining of the size that makes them now the ten largest banks in the State and have the characteristics the government has identified as expanding independently into statewide systems.

In view of that fact, that there are four, there were —in all cases where there would have been five before,

taking the most—the major case, which is those three towns, the difference between four and five, in my judgment, is not a significant lessening of potential competition.

THE COURT: Excuse me, Doctor, would you just go over this chart 30 again?

THE WITNESS: Surely.

THE COURT: Let me just read the caption. All right. So on the left-hand side we have the number of banks remaining as possibile entrants into the 15 largest towns?

THE WITNESS: That's right.

THE COURT: If this merger were approved?

THE WITNESS: Right.

THE COURT: So out of the ten largest—right?

THE WITNESS: Uh-huh.

[1283] THE COURT: —there are no towns which would only have one possible entrant?

THE WITNESS: That is right.

THE COURT: There are no towns that would only have two, none for three?

THE WITNESS: Yes, sir.

THE COURT: All right. Now, we have three towns that only four would remain?

THE WITNESS: That is right.

THE COURT: And so forth?

THE WITNESS: Yes, sir.

THE COURT: All right. Go ahead.

BY MR. REYCRAFT:

Q Doctor Peck, have you made any calculations as to how population growth of these 15 largest towns might affect entry over the next decade?

A Yes, I have. That is reflected in Defendants' Exhibit 31.

Q Doctor Peck, would you explain Defendants' Exhibit No. 31?

A Yes, I will. I'll explain first the column entries and then I'll explain certain assumptions that are necessary to—or underlie the table. The—it simply lists the 15 largest towns in order of their size, their present popu-

lation, their [1284] 1980 population as projected by the State planning office, and then we—then the calculation is made, percent of growth of the population.

The next column gives the present population per bank office. Now, the table becomes analytical and involves some assumptions. When you go to the next column, which is the number of entrants that could occur without reducing the present bank population per bank office by 1980, that is: if a town had no growth, for example, there could be no entry there without reducing the population per bank office.

Then the next column gives the number of potential entrants capable of statewide operation remaining after the merger.

I think perhaps I could illustrate this best by taking the first entry, if I might, Mr. Reycraft.

Q Please do.

A Hartford. That is a town that is scheduled, according to the State Planning Office, for a modest population growth. That would permit one bank to enter without reducing the present population per bank office by 1980. With the population growth you could have one new entrant, there are, if you like plaintiff's, for one po'—six potential for statewide, so twice the number of entrants that occur without reducing the bank population relative to the number [1285] of entrants that will be available, remembering this was limited to those that are capable of statewide operation after the merger.

If you like, it's a kind of demand and supply analysis of entry, where one column is the number of entrants that could occur, and the other is the number available to fill those slots.

Now, I don't want to be overly boastful about it, but it is a complicated table, and what I wanted to point out is that this table really should be viewed, I think, as instructive, rather than conclusive. Because there are certain assumptions—underlie it which cut both ways. But it is an attempt to do two things. One is to point out that, in my view, banking is not like the corner grocery store, a town cannot accept an unlimited number of banks both for economic reasons and for regula-

tory reasons. The second thing is it tries to see how many banks could it accept.

Now let me enumerate the arbitrary assumptions, because I want those—I think the table is clearer if you recognize what those assumptions are.

First, it assumes that banking—population per bank office will not change, it assumes that if there are 5,448 people per bank office in Hartford today, there will be tomorrow. That is not a bad assumption, because towns, you will see, vary in their economic prosperity, the kind [1286] of business activity they have, so that the population per bank office now varies and those differences are likely to continue.

However, there is some trend towards fewer population per bank office, so that in that sense it may understate the opportunities for entry. However, there's another assumption that cuts the other way, which is this assumes that all the growth would be available to new entrants. And on the other hand, I think it likely in Hartford if there was enough population growth, that a new office or new branches were called for, some of the banks now there would expand and take some of that growth. So that's a second assumption.

The other assumption is that it doesn't reflect growth in the suburbs, but it is an attempt to illustrate these two points: That banking is an industry that cannot have unlimited entry and tries—compare the number of entrants possible without reducing the population per bank office relative to the number of entrants that are available after the merger.

Q Doctor Peck, you were commenting on Hartford, and have you completed your comments on Hartford?

A I used it as an illustration, I think all I could add is that there's—that the population growth in Hartford is modest and there could be one entrant without reducing the [1287] population per bank office, and there are six potential entrants available with statewide operation, I mean—no one other fact about the table, it assumes that the new entrant comes in with one office, oftentimes to be a competitive competitor it needs to come in with

two or three in a town, so that assumption, again, overstates the amount of entry.

Q So in each case the entrant is by a single office?

A That's right.

Q Doctor Peck, would you turn to the column on Bridgeport and explain the entries for Bridgeport?

A Well, the situation in Bridgeport is that, according to the State Planning Office, there will be a modest decrease in population. That means that no banks could come in without reducing the population per bank office, and there are five potential entrants available after the merger.

Q And what does the data show with respect to New Haven?

A New Haven is scheduled for somewhat greater population growth, so that there could be two entrants out of one bank, on a one-office basis, and there are four potential entrants available after the merger that the government's identified as capable of statewide operation.

I might observe that there's no bank in New Haven that [1288] operates one office, the Union Trust, I think, has the fewest number of offices in the immediate City of New Haven, and it happens to have, so if there were two entries, the numbers would be halved.

Q If one entrant came in with two offices, what would be the effect?

A That would be—no more entry could occur without reducing the population per bank office.

That's a number of some significance, it seems to me, because the population per bank office is a crude proxy of the amount of demand, very crude proxy, but it also figures in some regulatory decisions.

Q And assuming that two separate banks entered New Haven, how many would be left as potential entrants?

A There would then be two potential entrants after two more entered.

Q And if one entered with two offices, how many would be left?

A There would be three left.

[1289] THE COURT: I should have asked this a long time ago, Mr. Reycraft, but I will ask it now, before I forget:

This expert is testifying on government assumptions and figures?

MR. REYCRAFT: Yes, sir.

THE COURT: But I recollect earlier that Dr. Stokes and perhaps others were not ready to accept that there are ten banks capable of statewide expansion. I seem to recollect that somebody said that he thought only the two Hartford banks were capable of statewide—

MR. REYCRAFT: My recollection of the testimony, your Honor—I could be wrong about this—is that at the present time the two Hartford banks are the only statewide systems.

Dr. Peck is basing his testimony upon the government's answer to an interrogatory of the defendants in which they identified ten banks as potential statewide banking systems, so they, as we understand it, say that these ten banks are potential entrants throughout the state by either de novo branching or by chartering, whatever way is available.

[1290] So we have accepted that assumption.

THE COURT: Yes, I recognize that. You are accepting that assumption. In other words, Dr. Peck is saying assuming that the government's figures are correct.

My question right now is do you accept that as a fact.

MR. REYCRAFT: I am not sure quite how to answer it, your Honor. I would say that we do not consider that either of the defendants is capable of having a statewide branching system comparable to Connecticut Bank & Trust Company and Hartford National Bank, for example.

THE COURT: If CNB is fifth and First New Haven is seventh, then you certainly would not agree that the eighth, ninth and tenth bank were capable of statewide expansion?

MR. REYCRAFT: We would agree with what Dr. Peck has said; namely, that size has some relationship

to the possibility of entry and that as you go down the size list they become less likely potential entrants throughout the state.

I would say that when you get to the tenth, it does not seem to me to be likely to develop into [1291] a statewide branching system in the foreseeable future.

THE COURT: All right.

The only bearing it has, at least at this point, until I restudy the whole picture, is that, if we use the population per bank office as a criterion, with all the qualifications that Dr. Peck has put on that criterion, in theory there is one—take Hartford—one entrant possible that correlates to the criterion, and there are six potentials.

But that is in theory. Maybe as a matter of practice and reality there may be no potentials or may be four out of the six or five out of the six, because of the ten—let's take the tenth; it is just so small as a potential entrant, it is just not realistic, it would never get into Hartford.

Does that reflect any of your thinking on it?

THE WITNESS: Well, I think that the Hartford one is a very special case, your Honor, because that's the home office of the two largest banks.

THE COURT: Right.

What bank is tenth?

[1292] THE WITNESS: The Second New Haven is.

THE COURT: Does it really make sense to say that the Second New Haven, if it was going to go anywhere, is going to take on the two Hartford banks in their home town, however they can get in there?

In theory, sure, the Second National is the tenth largest bank and is a possible entrant. But, looking at the Hartford situation from the Second National's point of view, if they are going to be entrants, wouldn't you think, based on your knowledge and experience, the last place they would want to take on another bank would be in the City of Hartford, where the Hartford National has its headquarters, with many branches, and CBT is up there, and so forth?

THE WITNESS: I think that the Hartford situa-

tion is unique in the sense that it's the home office of the two largest banks. The banking market—the town of Hartford—the banks' deposits are fairly concentrated —stands out as one of the most concentrated markets. It's possible that there's no potential entrant today that could crack the Hartford market, and that [1293] means that potential competition has zero significance, because those two banks are so entrenched that none of these six are ever going to enter; therefore, the banks now there don't ever worry about potential competition.

You follow me, your Honor?

THE COURT: Yes, sure.

THE WITNESS: Now, the bank that is closest in size to the two Hartford banks is the Union Trust. But it hasn't gone into Hartford. The merger will create a bank that is somewhat larger than the Union Trust, and it would seem to me that, if there's going to be entry into Hartford, it would come from these two sized banks; that is, a bank of the—bigger than the present Union Trust or at least of the same size.

THE COURT: You see, what is going on in more the legalistic mind than perhaps the economist mind is the difference of terms of "potential," "probable" and "possible."

I perhaps can see, subject to change when I study, possible entrants into the Hartford area, but probable entrants are quite different, in my mind. Where does potential fit in that spectrum [1294] of possible to probable? I mean it is possible that the Woodbridge Bank may say "I think we will go into Hartford," but, as a probability, you would say it is highly improbable; am I correct?

THE WITNESS: That is right, your Honor.

THE COURT: All right.

How does the word "potential," in the way you are using it, fit on my spectrum between possible and probable?

THE WITNESS: I think that one factor that's not reflected in this table and perhaps not enough in my testimony is that there is, if you like, a question, is there going to be any entry at all; and I think that that is

particularly an apt question for Hartford, much less so for the towns as they descend in size.

Now, there are two ways you could approach in analyzing potential competition: One is you could say is there going to be any entry at all; and a second question is—you are dealing with a merger, and you could say, well, if there's no entry at all possible, then there's no effect on potential competition, because there's not going to be entry and that's not a factor in the market. [1295] A second way you could say—well, let's assume that there could be some potential competition; what is the effect on the potential competitors. And my approach has been more to say that the merger, looked at in various ways, doesn't change the structure of potential competitors, rather than is potential competition in the first place of at all significance.

The reason I took that second approach is that it seemed to me that one way that I could—one way to clarify the issue is to explore further the contentions of the government, and I think that they—I don't want—I don't want to characterize potential, but it seems to me implicit in their argument is potential competition matters. I haven't really tested, your Honor. I said assume it matters; what difference does it make.

BY MR. REYCRAFT:

Q Dr. Peck, isn't one of the issues whether Hartford National Bank and CB&T sitting up there in Hartford are going to be affected in their competitive behavior in any way by the threat of entry of any of these so-called possible statewide bank systems?

A Yes, I think that is an issue.

[1296] If it is true—I don't know exactly how you test that the Hartford and Connecticut National—Connecticut Bank & Trust are so large and so entrenched in Hartford that they don't worry about any potential competition—then the whole analysis—the merger can have no effect on potential competition because there's no potential competition to start with.

Q In other words, if 90 percent of the input into their

decisions—the Hartford National's decisions, for example—is what CB&T is going to do if they do this and 10 percent, maybe, "Well, gee, if we get the prices too high, Union Trust or Connecticut National may come in," then is potential competition very important at all?

A No, it is not. It's really just saying that—it's just not a factor, because entry is not an important factor in their consideration.

Recall that the way that I've defined potential competition is the competitive pressures on existing sellers by the threat of entry. That's a fairly standard definition. Here the threat of entry is only 10 percent in the assumptions of your question; therefore, it's a negligible factor.

Q Dr. Peck, you have also taken a look at Stamford. [1297] Can you tell me how many banks could make one-office entries into Stamford theoretically without reducing the population per bank office below its present level?

A Six banks.

Q How many banks identified by the government as banks capable of expanding into statewide systems would remain after the merger?

A Five.

Q What are the the fewest branches in Stamford that the banks presently operating in Stamford have?

A Well, there's the First Stamford Bank & Trust, which only operates a home office. I think that all the out-of-town banks have at least four offices.

Q How many banks could enter Stamford with system branches as the fewest out-of-town banks now have without reducing the present average population per bank office?

A One. If you shade the figure a little, two.

Q Would you explain that.

A Well, one and a half is the exact arithmetical answer; because you can't enter halfway, it would be either one or two.

Q How many potential entrants remain, after the consolidation, which have been identified by the government as capable of independently developing into statewide [1298] banking systems?

A Five.

Q Are there any other special features about Stamford which can be observed from your table, D-31?

A Yes.

You will notice that the population per bank office is substantially lower than all the other towns. There's only one other, Danbury, which is lower. There's been quite a bit of growth in Stamford, and it's projected for reasonable further growth. The present low population per bank office indicates that some of the entry may have occurred in anticipation of the growth, and that would mean that the entry prospects over the next ten years are not as high as they would otherwise be.

Q Have you considered the fact that Stamford is a high income area?

A Yes. However, take the Town of Greenwich. I can't recall the exact figures, but it is also a suburb of —a high income suburb, and it has substantially more population per bank office.

Q What is the significance of the present low population per bank office for entry?

A Well, I think that that indicates that some people put it—the banking area there is so much saturated, it [1299] means there'd be less entry.

Q You referred to Danbury as being another town which has a comparatively low population per bank office.

Does that have a high projection for increased population?

A Yes. It actually has the highest on the table, greatest growth. Sometimes you find when there's a common projection of high growth people enter in anticipation of growth, and maybe that's what happened in Danbury and explains the present low population per bank office.

Q How many banks with single offices could enter Danbury by 1980 without reducing the present population per bank office?

A Five.

Q How many banks remain as potential entrants after the consolidation, that have been identified as potential entrants?

A Four.

Q Assume that all four enter Danbury, what would be the competitive effect in Danbury?

A Well, it would be a town in which the nine biggest banks in the state would be operating.

I think, as I've testified previously, a bank when it actually enters the market, has more effect on [1300] competition than when it remains as a potential competitor.

Q Dr. Peck, you also indicated that you had made a survey of small towns in the State of Connecticut.

Will you describe the procedure which you used?

A Yes.

I feel that towns of very low population represent, just as towns of very high population, a somewhat special case. I compiled a list of towns that had two characteristics: They don't now have a bank, and their population growth by 1980 will be—leave them still five thousand or less. That list is contained in Defendants' Exhibit 32.

Q How many towns are on that list?

A There are thirty towns.

Q What would the effect of the proposed consolidation be on potential competition in these thirty towns?

A Well, since they don't now have a bank, there are ten banks capable of statewide operations that are available as potential entrants; after the merger there would be nine.

Now, since these towns don't now have a bank and since their population will be five thousand or less, it's likely that at most there would be one bank in these towns. The present population per bank office is 5633 in open towns, which these are. So that it would be, it seems to me, unlikely that there would be more than one entrant, and [1301] there are nine potential entrants available among these larger banks.

Q In your opinion, would the proposed consolidation have any tendency to substantially lessen potential competition in any of these towns you have just described?

A I conclude that it would not lessen significantly potential competition, because there are nine potential entrants relative to a population that at most would support

one bank and in many cases would not even support one. For instance, the Town of Colbrook, I notice here, will only have 1500 residents by 1980.

MR. REYCRAFT: Your Honor, would this be a convenient time to recess?

THE COURT: Yes.

Recess until two-fifteen.

(Luncheon recess at 12:55 o'clock p.m.)

[1302] AFTERNOON SESSION

THE COURT: Are the parties ready to proceed?

MR. REYCRAFT: Yes, your Honor.

THE COURT: I understand it has been agreed by all sides to have an abbreviated session?

MR. REYCRAFT: Yes, your Honor, three-thirty. Mr. Clark is agreeable to that.

THE COURT: Fine.

MERTON J. PECK resumed and testified further as follows:

DIRECT EXAMINATION (Cont'd)

BY MR. REYCRAFT:

Q Dr. Peck, earlier you mentioned towns in which the ranking by geographic proximity will change because the defendants have offered to sell branches following the consolidation.

Are you familiar with the towns in which these branches are located?

A There's a branch in the—of the Connecticut National in Orange, which is scheduled to be sold, as I understand it, to Nutmet Trust, which is a newly formed bank. There is also a bank in Milford—branch in Milford, which is scheduled to be sold to the Hartford National Bank, and a [1303] bank in Derby which is scheduled to be sold—a branch in Derby which is scheduled to be sold to Connecticut Bank & Trust.

Q Did you conduct any study or analysis as to how the sale of those branches would affect existing competition in the towns involved?

A No, I did not.

Q Would the sale of a branch affect potential competition in adjoining towns?

A Yes, it would, in the sense it would change the geographic rankings.

Q Did you make any adjustment in your statistical analysis data sheets and resulting summary tabulations to reflect the sale of these branches?

A No, I did not, but I examined the data sheets of towns—adjoining towns that would be affected, where the geographic ranking would be affected by the sale of these branches.

Q Which towns were those?

A Those towns were Shelton, West Haven, Trumbull and Stratford.

Q These are towns, as I understand it, which are nearby the towns in which divestiture has been proposed?

A That is right.

[1304] Q Will you turn to the data sheet for Shelton and explain the effect on the entries in that sheet?

A Yes.

That is a town in which the Connecticut National now operates, and the merger has the effect of eliminating the First New Haven as a potential entrant, and that is the fifth-ranked potential entrant by size.

However, you will notice, looking—glancing to the—below, that the First New Haven is the first-ranked entrant by geographic proximity by virtue of its Derby office. That is—would be scheduled to be sold to the Connecticut Bank & Trust, second largest bank in the state, and the Connecticut Bank & Trust would succeed, so to speak, to the geographic proximity given by First New Haven's Derby office.

Q Is there any possibility that this open town will become a closed town in the future?

A Yes. I understand that the Valley Bank & Trust filed a new bank application in 1972. If that's granted, it would become a closed town.

Q What effect would closing the town have on potential competition?

A It would have the effect of making entry more difficult, because it would eliminate the possibility of [1305] de novo branching as a method of entry.

Q Dr. Peck, you referred to West Haven as being another town nearby to the four-town area in which divestiture is to take place.

Would you tell me what the impact of that would be on West Haven, from the data sheet?

A Well, again, the effects would be in the geographic proximity rankings. The third-ranked entrant is the—now the Connecticut National Bank in terms of geographic proximity by virtue of its Orange office. This is scheduled to be sold to the Nutmeg Bank & Trust, and it would succeed to the Connecticut National's position in terms of geographic proximity.

Q Is West Haven a town included on your list of towns whose population projection you examined?

A Yes, it is.

Q How many office entries could occur without reducing the average population per bank office?

A Referring back to Defendants' Exhibit 31, none, because the population growth is projected to be relatively small in West Haven.

Q Will you refer to the data sheet on Trumbull and describe the entries there.

A Trumbull is a town in which the Connecticut [1306] National now operates a branch. The merger has the effect of eliminating the First New Haven National Bank as a potential entrant. It is fifth in geographic proximity by virtue of its Derby office, which is scheduled to be sold to the Connecticut Bank & Trust.

Q Will you describe the effect on Stratford, from the data sheet.

A The Town of Stratford—again, the sale of these branches affects geographic proximity. The First—that is, again, a town in which Connecticut National Bank now operates branches. The First New Haven is third in geographic proximity as a potential entrant for Stratford by virtue of its Milford office. That office is scheduled to be sold to the Hartford National Bank, which

would succeed to the First New Haven's position by geographic proximity.

Since the First—the Hartford National Bank replaces the First New Haven, there is little effect on the ranking of potential entrants by geographic proximity.

Q Dr. Peck, each of these towns, with the exception of West Haven, is less than fifty thousand. Are those towns in which you have previously testified that geographic proximity was important?

A Yes. They are less than fifty thousand. West [1307] Haven is very close to the fifty thousand limit, and I previously testified that in the smaller towns geographic proximity is more important.

Q How many potential entrants would remain for these towns after the proposed consolidation; that is, entrants which the government has identified as capable of expanding independently into statewide banking systems?

A The Town of West Haven there would be six. For the Town of Shelton, seven. For the Town of Stratford, eight. And for the Town of Trumbull six.

Q In any of these four towns do you consider that the proposed consolidation would substantially lessen potential competition?

A I consider that for these towns proposed consolidation would not lessen potential competition. In each case there remain a significant number of banks as potential entrants that are—have been identified by the government as capable of developing independently into statewide operations.

I also note that in each case the effect on geographic proximity is largely offset by the fact that new branches are scheduled to be sold that are in nearby towns, so the merger has little effect on geographic proximity.

Q Dr. Peck, did you make a similar summary for the [1308] open towns in Connecticut, including those you have already discussed?

A Yes, I did. That is in Defendants' Exhibit 21.

Q How many such open towns are there?

A There are 125 towns.

Q Considering only geographic proximity, what was

the rank of the potential entrant eliminated theoretically in all 125 open towns?

A Mr. Reycraft, the Defendants' Exhibit 21 relates to size. If we go to geographic proximity, it should be Defendants' Exhibit 22.

Q All right. Will you describe the conclusions you draw from D-21 first?

A All right.

That is a tabulation of the rank of the potential entrant eliminated by the consolidation. In—as you will notice there, in no town is the first ranked potential entrant eliminated by consolidation. Remember, this refers only to size. In two towns the second ranked is eliminated by the consolidation. The most common situation is that the merger has the effect of eliminating the seventh ranked potential entrant, because, you will notice, there's 63 observations there; almost half the cases fall in that one.

Q Referring to D-22, which analyzes the effect on a [1309] geographic basis, what does that table show?

A That shows the rank of the potential entrant eliminated by consolidation using geographic proximity.

In one town the leading potential entrant's eliminated. In no towns is the second ranked eliminated. In most cases, 112 out of the 125, it does not affect—the merger does not affect the ten nearest banks.

Q Did you, Dr. Peck, make any effort to cross-classify the results by size and geographic proximity?

A Yes, I did. That can be found in Defendants' Exhibit 23.

Q What does Defendants' Exhibit 23 show?

A This is an attempt to show at the same time both geographic proximity and size. Geographic proximity is across the horizontal axis and size is down the vertical axis. The square that would be one-one would be a case in which the merger had the effect of eliminating the nearest bank and the largest bank that's available as a potential entrant. Similarly, square two-two would indicate that the merger eliminates the second ranked by size and the second ranked by geographic proximity. And so forth.

So that this gives you a picture of the simultaneous interaction of geographic proximity and size.

You will notice that there are very few [1310] observations in the—in the left-hand upper corner, which would be where the two variables are at the—

Q Will you refer to the entry on D-23 for Shelton, and will you explain that.

A Well, Shelton happens to be the entry there that is fifth by size, but first by geographic proximity.

Q What about the entry for West Haven?

A The entry for West Haven is fourth by size and third by geographic proximity.

Those are both towns in which the geographic proximity would change because of the sale of branches.

Q Most of the entries on D-23 are in the far right-hand side and on the lower end of the table.

What does that indicate to you, generally?

A That indicates that the effect of the consolidation is generally to remove a potential entrant that is ranked low on the size criteria and low on the geographic proximity criteria.

Q Did you summarize the number of banks identified as capable of expanding into statewide systems by the government which remain as potential entrants in all 125 open towns?

A Yes, I did. That is in Defendants' Exhibit 34.

Q What does that table show?

[1311] A That shows for the 125 towns how many banks remain as potential entrants that fall into this class the government's identified as capable of expanding into statewide systems.

For example, there is, if you look at the entry one there—that would be the case of one such bank remaining. There are no towns that fall into that category. Similarly, there are no cases in which there are two such banks remaining. There are no cases where there are three such banks remaining. There are two cases in which there are four such banks remaining and two cases in which there are five such banks remaining. In many cases, because—partly because a lot of these towns are quite small, there are nine such banks remaining.

Q Dr. Peck, based on your analysis of the data you have just been referring to, is it your opinion that the proposed consolidation might or reasonably probably will have the effect of creating a substantial lessening of potential competition in the 125 towns you have analyzed?

THE WITNESS: Would you read that question back.

(The pending question was read by the reporter as above recorded.)

A My judgment is that the proposed consolidation [1312] would not have the effect of significantly reducing potential in the 125 towns. I base that conclusion on the tables we've just examined.

In—there are—are not cases where the merger has the effect of eliminating the closest entrant or the largest potential entrant. Rather, most all the observations fall into a category where there are distant banks or they are relatively small compared to the other potential entrants.

So that it seems to me one can draw the conclusion that the merger does not eliminate the most likely or leading, a term often used in the literature, potential entrant.

Similarly, if I turn to the question of how many banks remain after the merger that are large and have been identified by the government as capable of statewide operations, in every town there's at least four such banks remaining after the merger as potential entrants and in most towns there are considerably more.

[1313] Q Doctor Peck, turning now to closed towns, did you make a similar survey for closed towns comparable to the one for open towns you have just described?

A Yes, I did. That can be found in Defendants' Exhibits 24, 25 and 26.

Q What—you have already testified about the problems of de novo branching and the problems of entering by—of closed towns by forming de novo chartered banks, is it your understanding based on testimony you have

heard here that entry by chartering of new banks requires a greater capital outlay than de nevo branching?

MR. CLARK: Your Honor, object again. If he is simply basing his testimony on what he may or may not have heard—has no probative value at all.

THE COURT: Well, it would be interesting to see if he agrees to it. It goes to weight, not admissibility, you can cross examine.

MR. REYCRAFT: I'm not claiming he's made any independent study of the cost of entering, but I'm asking him based on testimony that's in the record what does it indicate to him.

A Well, just so the record will be clear, I have not made any independent study of the amount required to enter by de novo chartering as opposed to branches, it is my [1314] understanding that de novo chartering is —significantly a more expensive route, that the cost of de novo chartering is, at a minimum, two and a half million dollars, whereas branches are considerably less. The effect of this is that it raises the cost of entry and reduces the significance of potential competition.

Q And have you also considered and made some investigation to determine whether the de novo chartering route has ever been tried in the State of Connecticut?

A Yes. It's my understanding it never has been tried.

Q And what impact does this have, in your opinion, on its effect on potential competition?

A It seems to me that it has the following effect: Recall that potential competition is the competitive pressure on existing sellers by the threat of entry.

Q Have you considered the post—excuse me, go ahead and finish your answer.

A Well, if there's an entry route that hasn't been tried, it seems to me existing sellers would discount that possibility. The competitive—the threat of entry has to be, it seems to me, more than a possibility, but a realistic probability, and a route that has never been tried is unlikely in my judgment to figure heavily in the decisions of existing sellers.

[1315] Q Have you considered what consideration existing sellers might give to the possibility of entry by merger in a closed town?

A Yes. I think this does have the aspect that it can be a more expensive route. Again, particularly when the number of candidates for acquisition are small.

Q And isn't it a barrier to entry?

A Yes, it is.

Q Doctor Peck, now turning to the closed town that you surveyed, would you summarize the results?

A Yes. Defendants' Exhibit 24 sums up all the data sheets for the closed towns by their ranking by size, it indicates that in no town is the potential entrant eliminated by consolidation, the first ranked entrant—potential entrant. In three towns he's the second ranked potential entrant, and so on, most of the observations fall in the situation where the merger eliminates the seventh ranked potential entrant.

Q And there are how many towns altogether involved?

A There are 40 such towns.

Q Would you identify the towns which are second by size and fourth by geographic proximity, third in size and fifth in geographic proximity, and third and fourth?

A To do that I'd like to—I think that can be best done by Defendants'—reference to Defendants' Exhibit 26.

[1316] Q Have I skipped an exhibit?

A Yes, you have, Mr. Reycraft.

Q All right. Will you describe Defendants' Exhibit No. 25?

A That's the geographic proximity ranking that—24 was the size, this is the geographic proximity taken alone, and what that shows is that in no town is the closest potential entrant eliminated by the consolidation, in no town is the second closest eliminated, there is one case in which the third, and so on.

The bulk of the observations fall at more than ten, indicating that the merger has this effect on a bank that is—in which there are ten closer potential entrants.

Q Will you refer now to table—is it P-9?

A I'm sorry. It might be Defendants' Exhibit 26.
Q All right. Have you just described 26?
A I just discussed Defendants' Exhibit 25. I would think the next logical order would be Defendants' Exhibit 26.
Q All right. Will you describe Defendants' Exhibit 26?
A Yes. That does the—makes the same cross classification of size and geographic proximity that was made for the open towns that I described previously.
It shows, then, across the horizontal axis the rank by geographic proximity, and down the vertical axis the rank by [1317] size. It shows that in no case does the merger eliminate an entrant that is number one in geographic proximity or number one in size.
It does show that the first place you begin to encounter observations is an entrant that is fourth in geographic proximity and second in size, and that is the case of New Haven. It also shows that the—another relatively high number is a potential entrant that is affected by the consolidation which is third in geographic proximity and fourth in size, that is: the Town of Stratford, and the Town of Bridgeport is the entry that is fifth in geographic proximity and third in size.
Q Doctor Peck, in your opinion, in any of the closed towns, would the proposed consolidation substantially lessen potential competition?
A No, it would not. I base that conclusion on both the ranking by size and geographic proximity, and also the number of entrants that remain as capable—remain which the government has identified as capable of expanding into statewide systems, and as to the first, I notice there's no case where the merger eliminates the number one by geographic proximity and size and so on, the bulk of the entries fall towards the case where it is low in relative size and low in geographic proximity.
The other point that underlies my conclusion is that in another exhibit I computed the number of banks remaining [1318] after the merger that are capable of—capable of expanding into statewide systems. In no town is there one such bank remaining, in no town is there

two—two such banks remaining, in no town is there three such banks remaining,; rather the entrants become positive only at four.

There are three towns of the 40 closed in which there are four such banks remaining. The bulk of the entries indicate that there are considerably more banks in the closed town remaining as potential entrants after the merger; it is on these two pieces of evidence that I reach my conclusion.

Q Doctor Peck, in making your analysis, I understand that you have excluded a number of topics from your analysis, and have you given any consideration to the government's contention that there is substantial existing competition between the Connecticut National and the First New Haven National Bank in Orange, Milford, Ansonia, Derby area?

A I have not included that topic in my analysis.

Q Have you investigated the impact of the merger on existing competition in those towns?

A No, I have not.

Q Do you have an opinion on the impact of the merger on existing competition in those towns?

A No, I do not.

[1319] Q Is it possible for you to reach an opinion on the impact on potential competition in the remaning 165 towns in Connecticut without examining the impact on existing competition in those four towns?

A Yes, I think it is. I don't think that there's a clear analytical link with what goes on in those four towns and the remaining 165 towns, I also observe that these four towns account for only 5% of the population in the State of Connecticut, they account for about 15% of the deposits of the First New Haven and 5% of the deposits for the Connecticut National. These two facts lead me to feel that I consider the question of potential competition without considering the direct competition in these four towns.

Q Are you aware of the contention that the standard metropolitan statistical areas in Connecticut are relevant markets for banking?

A I was aware of that contention.

Q And have you formed any opinion on this contention?

A No, I have not. Except to the extent that I had to consider what was the right geographical unit for the analysis of potential competition. For reasons I testified earlier, I consider the town the right unit. The smaller reflects the importance of convenience, state banking laws are written around the town. However, that is not to say that I concluded that [1320] town is necessarily the right, relevant market for all purposes.

Q Are you expressing any opinion as to whether the town is the relevant banking market for such things as pricing of banking services or advertising or any overall marketing program of a bank?

A I'm not expressing any opinion on that question.

Q And would it be necessary to do so in order to reach the conclusion you have reached on potential competition?

A No. I think it is not. The important thing is to ask in what geographical area would an existing seller find a threat of entry an important factor. I conclude that is the town rather than the larger unit of the standard metropolitan statistical area.

Q Did you give any consideration to concentration ratios in various claimed markets in this case?

A No, I did not.

Q And why not?

A It seems to me that that is a special art in itself and requires addressing a lot of questions that are not considered in my testimony. I think it is possible to analyze potential competition without considering the question of concentration. It is true that some economists begin with concentration ratios when they examine potential competition, but my general approach was to look at what the merger does to [1321] the structure of potential competitors, and I don't think it is necessary for that to examine concentration ratios in each market.

Q Doctor Peck, overall, in your opinion, would the proposed consolidation substantially lessen potential competition in any area?

A No. The proposed consolidation would not have a —would not eliminate significant potential competition in any area. I have looked at each of the different geographical ways to divide the proximity, the large towns, the very small towns, the towns in which geographic proximity changes because of the sale of branches, all the open towns, all the closed towns.

In each case I find that the—first, the merger does not eliminate the leading or—potential competitor on any wide scale at all. Second, in every unit of analysis shows that there remain a substantial number of competitors of significant size that are available—potential competitors that are available for entry to exercise the threat of entry. And the change in numbers do not seem to me decisive enough to change the structure of potential competition in any of these geographical units. Recall that potential competition, I think, starts from the outset with the problem that it is a more remote kind of competition than direct competition, and, therefore, changes are already, if you like, damped down by this very [1322] charter, but the change in potential competition, it seems to me, is relatively small.

Q Is there anything you would like to add to your conclusion as to the effect of this proposed consolidation on potential competition?

A I would make one observation on the way on which I approach the problem, and that is: there are two ways you could have looked at it as an economist.

One was to ask: is potential competition significant at all in the State of Connecticut given the close town, open town dichotomy, given a lot of other factors? I have followed a somewhat different route—is to say: let's leave that question alone, investigate how much does the merger change the structure for potential competition without directly focusing on how important it might be, let's say in the City of Hartford and so on.

Q So that potential competition may be completely unimportant and that your testimony is not suggesting that it is or is not?

A That is right.

MR. REYCRAFT: I have no further questions.

THE COURT: You stated to a series of questions that you had an opinion that this merger would not substantially lessen competition?

[1323] THE WITNESS: No, your Honor, I think I state that it would not substantially lessen potential competition.

THE COURT: All right. Potential competition. All right?

THE WITNESS: Right.

THE COURT: Would it lessen potential competition to any degree, substantial or insubstantial?

THE WITNESS: I think there is a mechanical view of the world, which is, whenever you eliminate a potential competitor, you have some small effect, but I think the effect is so small that you sometimes put an equal fire in there, but don't think it has an effect on potential competition.

THE COURT: All right. Does it increase the prospects of potential competition in any respect that you can see?

THE WITNESS: It has one procompetitive aspect which I have not investigated in great detail, and that is: the prospects of entry into Hartford, which is a town that has a high concentration, is presently the headquarters of two large banks. It may be that a larger entrant, potential entrant, which the consolidated bank would be a more probable [1324] entrant than the two banks individually in their present size, so that I think of that as a procompetitive effect. Simply because—well, the numbers may change that looks like its reducing competition, the fact that you are adding a potential entrant of substantial size may well swamp that for the City of Hartford.

THE COURT: Have you analyzed at all the effect that this merger may have in the New London County area?

THE WITNESS: I have not focused—it's on one of my data sheets, but I have not focused on that to the extent that I have focused on Hartford.

THE COURT: I think that ends my question.

BY MR. REYCRAFT:

Q Would you like to refer to the data sheet on New London? Do you have that?

A I'm sorry, I don't have it, Mr. Reycraft.

Q Would you take a look at the data sheet on New London, Doctor Peck, and summarize your view of that sheet?

A Well, this is a closed town in which the two largest banks in the State operate. And the potential entrants that's affected by the consolidation is the First New Haven National Bank.

[1325] Q Doctor Peck, excuse me, let me correct you. Since the data on this exhibit was prepared Winthrop Bank and Trust Company has been acquired by Union Trust, and I believe that New London is now an open town?

A All right. But there now are—we have in the town the State's three largest banks. It may be that a bank near the size of the Union Trust would be more readily eager to engage these three large banks in competition than they—the two defendant banks in—with their separate size. But I think this is—that is a logical speculation, but I don't—have not investigated New London in any detail, as I did to some extent to Hartford.

Q To the extent that size is a relevant consideration, would the proposed merger make the consolidated bank a more likely entrant into New London?

A Yes, it would make it more like the Union Trust Company, which are—as you just indicated, has already entered the New London market.

MR. REYCRAFT: I have no further questions.

THE COURT: Cross examination?

MR. McENERNEY: I have nothing, your Honor.

THE COURT: Mr. Bell?

MR. BELL: Nothing.

THE COURT: Anyone else?

[1326] Mr. Clark?

MR. CLARK: Your Honor.

CROSS EXAMINATION

BY MR. CLARK:

Q Doctor Peck, would you—so we can start off on the same foot, would you define once again what potential competition means to you?

A Potential competition is the competitive pressure on existing sellers that is provided by the threat of entry of new competitors. Sometimes some writers put in it also has a potential for providing some deconcentration, but I think that the narrower definition is more in accord with economic literature.

Q At least as far as you are concerned, you based all of your testimony on this one effect, the effect which it has on—on existing competitors through the threat of entry, am I correct?

A Well, it turns out that it—that if you have a situation where the threat of entry is important, that is also a potential for deconcentration.

I think that for a definition of potential competition, I think that my definition can be read as fairly close to that, for example, in the Solicitor General's brief in the Greeley case.

Q I'm more interested in your opinion, if you would—

[1327] A Well, I think I have stated it, that it is the threat on existing sellers provided by entry. It is also true that it has a potential for deconcentration.

Q But you didn't consider concentration, did you, in any of these markets which you analyzed relating to potential competition?

A That is right. However, if a bank enters—suppose it's a highly likely entrant—that gives it two effects, one is that it provides the competitive threat on existing sellers. Second, it's the most likely candidate to reduce concentration, how much it would do, because I didn't analyze concentration ratios, so I don't know.

Q I see. But you did testify that Hartford is highly concentrated, didn't you?

A Yes, I did.

Q What difference does that make, then, in terms of

your potential competition analysis? I don't know what the relevance of that is, given—the way that you analyzed—

A Well, it was to the effect that a market that is highly concentrated may on some occasions be less attractive to entry because there are two entrenched banks in the—there, that have a large percentage of the business.

I don't think you can make that as a general proposition, but Hartford somehow stands out as one in which two banks [1328] are—have a very central role in the City.

Q Now, there are different kinds of entry, different ways that a potential entrant can enter, aren't there? I think you discussed almost all of them, de novo entry, merger, merger with small banks, merger with a large bank, entry via holding company. Can you classify these as either procompetitive or anticompetitive? Is there a difference?

A Yes. The standard view is that if a bank enters a market and acquires—first a bank enters de novo branching, that adds one more competitor.

Q And that is procompetitive, then?

A And that is procompetitive.

Second, a bank enters by de novo chartering, and assuming it does, that's one of the things you have to assume here—

Q Yes.

A —that that route is open, there are no legal risks, financial risks, that adds another competitor.

Q And that is procompetitive?

A And that is procompetitive.

Now, the next form of entry is entry by acquiring a small bank. That doesn't change the number of competitors, it may or may not lead to more resources being devoted to that market, and that is traditionally considered procompetitive, less so than de novo entry through branching.

[1329] The acquisition of a larger bank doesn't change the market structure at all, and in the normal way in which economists look at counting numbers and so on,

it is—be considered neutral, that is: acquisition of a larger bank.

Q Well, if the bank that acquires this larger bank—let's say, a leading bank—let's have a hypothetical situation, a market in which three firms control about 80% of the deposits or whatever—have you, would you agree that that's highly concentrated?

A Well, I'd have to—there is a problem in concentration ratios that you have to be sure you are measuring over the right base. But let's assume, to make it simpler, if I might, I'm thinking about a national industry, like automobiles. 80% concentration ratio by three firms is generally considered a high concentration ratio. When you move to regional and smaller markets, it gets a lot more tricky.

Q Let's just assume that we have properly defined the market, whatever it is, and that the three leading firms do control 80%, and that a leading potential entrant, however you define it, acquires the competitor with the largest share, about 40%. Now, would you consider that acquisition to be procompetitive or anticompetitive?

A The acquiring firm is the leading potential competitor?

Q Yes.

[1330] A And it acquires a firm that is 40% of the market? That is—from those facts alone, that is—tends to be an anticompetitive acquisition. It sounds to me very analogous to some of the potential competition cases that have been tried before the Supreme Court.

Q Yes. Why is it anticompetitive?

A Well, the ones that I'm familiar with are ones in which the court determined that, first, this was the—I think they used sometimes the firm on the fringe of the market, and you removed a factor that exercises some threat of entry, and it's acquired a large firm, so, in effect, you have lost a potential competitor and gained nothing in the actual competitor situation.

To my knowledge, most of those cases have dealt with the leading or most likely entrant, which is also true of this factual situation.

Q Well, is that how you define a leading potential entrant? Must it always be the most likely?

A Yes, it seems to me—suppose I say the leading entrant, I mean this is semantics, but I want to be clear that I considered that from the most likely entry, reasonable probabilities considered, if a firm were the tenth most likely, I don't think most people would call it the leading potential entry. My recollection of some of the Supreme Court cases, [1331] they speak of the leading entrant, which seems to be the one most likely to enter.

Q I'm trying to get your own views here and not necessarily those of the Supreme Court. Does it matter how many potential entrants there are as long as—if the most likely or leading potential entrant is the one that acquires this leading bank in a market?

A If there's a second ranked potential entrant that is very similar to the first ranked potential entrant, then the loss is a lot less and so on down, so it's a question of what the whole pool of potential entrants is in addition to the most leading entrant.

Q If there were only two, though, perhaps even if they were comparable, it's possible that there is rather serious elimination of potential competition?

A This is a hypothetical situation—

Q Yes, yes.

A —where they acquire a substantial seller and there are only two potential entrants, and that's all and one of them acquires a substantial seller, that would have an anticompetitive effect.

You would have to know a lot more than the raw facts, it seems to me, that we're dealing with here. But as a straight logical proposition, I think it would be anticompetitive.

[1332] Q How many more raw facts did you use when you analyzed the effects of potential competition in these towns that you talked about?

A Well, I'd—I had the entire menu, if you like, of all the Connecticut banks, I had the size rankings and I had the geographic proximity rankings and I had—

had to make some decisions about the geographic unit, those are additional or sort of assumed in your question here, so there are some additional facts.

Q Well, once you decided on the geographic unit and you ranked these outside banks by size and by proximity, did you consider any other facts at all?

A Well, the only additional facts I considered were things that, in fact, were correlated with size, like expansion into new towns, I did not consider—the data sheets, I think, are pretty self-explanatory in the case of particular towns I examined like Bridgeport and Hartford, I discussed economic growth of the markets, whether it's closed or open, the facts I considered are fairly completely covered in the tables in the exhibits that are here.

Q One of which, I gather, was not the degree of concentration within these markets?

A That is right. That is—that, I think—that was not a fact I considered.

[1333] Q Doctor Peck, what is your conception of a market?

A The—one way of looking at markets is to define, first, a product, which is a complicated matter, because what you really want is—you want to include in there products that consumers regard as fairly close substitutes.

Second consideration is geography, whether they're close substitutes geographically. The market, taken in a larger sense or definition, is a collection of buyers and sellers who on the selling side, they're selling close—fairly close substitutes, and on the buying side they are—the consumers regard what is being sold as close substitutes for one another.

Q Now, when you analyze a merger, as I assume you have done from time to time, although you haven't done it in banking, have you? You have never analyzed a banking merger before this one, did you?

A No, I did not.

Q When you analyze any merger, I don't think it matters what the industry is, you first have to define the relative markets, don't you?

A Well, it depends on what you are analyzing it for.

Q Analyzing the competitive factor.

A If you are analyzing for actual competition, it seems to me you—that is a different question than looking at one [1334] aspect of the merger which is potential competition.

Q What is the difference?

A The difference? Well, the difference is that you could, for example, consider that the—the right unit for analysis of influences on interest rates might be a quite large geographical area, whereas when you are asking about the threat of entry, it might be a much smaller geographical area, so there seems to be quite differences—depending on what you're considering.

Q What you are saying is that in the area in which you would consider potential competition might—or does not necessarily have to be a relevant geographic market within which to—you would analyze the competitive effects?

A That is right. I think that the relevant geographic market can be larger or smaller than the one you use for the analysis of potential competition.

Q I don't understand, if we're talking about the effect of potential competition upon competitors and if we have to define competitors in terms of market where they do their business, how you can define the effect of potential competition on competitors without using the market in which they compete? I simply don't follow your analysis that—that you use some other area, town, what have you.

A I—wanted to consider the effect of possibility [1335] of entry on banks, and for that, it seems to me, the town is the right unit.

Now, if you ask: what is the effect of various competitors for interest rates, I think that that would lead to a different kind of analysis than for entry. For example, it is possible that the SMSA or the State of Connecticut might be the relevant unit to analyze the effect on interest rates, but not the right unit to analyze the effect of potential competition.

Q How do banks compete, Doctor Peck?

A They compete on the basis of convenience, rates, service. It's a—partly on the depositors side a retail business, and partly on the loan side, also a retail business, but there are also on the loan side of the business some customers that can move over a rather wide area, and they may be the bearers or the factors that equalize interest rates.

Q Have you made any analysis in your study as to whether bankers do consider the threat of entry on a town by town basis?

A No, because I relied on an—on objective factors and on the—what seems to be the observations about the importance of convenience in the banking literature.

Q Well, now, First New Haven operates offices in New [1336] New Haven, don't they, and they operate offices in West Haven and East Haven and Wallingford and Orange? How would First New Haven consider the threat of entry in Orange separately from the threat of entry in West Haven?

A It seems to me that the threat of entry into Orange is a loss of customers—we assume here that they operate a branch in Orange—for its Orange branch, that's the primary effect.

[1337] BY MR. CLARK:

Q What effect would it have on First New Haven's decisions? What would they do differently if there was a threat of entry into Orange that did not exist into New Haven, for example?

A Well, they—they might try to deploy more resources, more direct mail advertising, spruce up the lobby. It is true that in banking a lot of the decisions about interest rates are determined by government regulations, so that there's—most of the competition takes a nonprice form. It seems to me they respond to entry into Orange by trying to increase the attractiveness of their Orange branch.

Q Can you think of any other ways?

A Well, given the fact that—that the number of variants of nonpriced competition are very large, it would be hard for them generally to compete on a price

basis in Orange just in response to that entry, because in many cases, for example, the possibility of paying interest rates on demand deposits are illegal.

Q You are aware, speaking of contentions, that defendants do not contend that towns are relevant markets, aren't you?

A That's right.

[1338] Q And you are aware that the plaintiff does not contend that towns are relevant markets?

A That's right.

Q So you have no opinion, do you, as to whether or not towns are banking markets or relevant markets?

A No, I have—I have no opinion, except I think it's the right unit for analysis of potential competition.

Q Because you say that banks fear entry on a town-by-town basis and they may react by sprucing up their lobbies or by—how else?

A By the variety of means of nonprice competition.

Now, remember that some of the banks are not—we're talking about competition in the market. Some of the banks we're talking about in these various towns operate only in one town, as, for example, the Woodbridge Bank.

Q By the way, do you think that Woodbridge is a banking market?

A No. I think it's the right analysis for—the unit of analysis for the effect—for analyzing the effect of the threat of entry in the Woodbridge location. Now, I think that locational factors are very important in banking and that most depositors pick a bank on the basis of location, and therefore, for the depositor who pick Woodbridge as a location, Woodbridge is the right unit of [1339] analysis.

Q But there are a lot of depositors right in Woodbridge, aren't there, who bank outside of that town?

A That is true, and there are also Woodbridge depositors—I mean non-Woodbridge depositors in the town. But, even there, people have different patterns. Some people bank where they work; some people bank near their home. There's a lot of variation. And a person who likes to bank near his home would not find a bank

in another town nearly as convenient; similarly, if he worked in Woodbridge, he would not find a bank in some other town as convenient.

Q So you think, then, nonprice competition is a significant way in which banks compete; is that correct?

A That is right. They also compete for loans in the discretion of whether they grant loans or not, and a lot of the loans come also from people in the nearby area who are also depositors.

Q And that banks can vary the way that they compete in this nonprice competition or in the loan terms? They can vary these things from town to town; right?

A Well, I think that if you are talking about a systemwide bank, it worries about potential competition in all the various towns in which it operates. It has varying degrees, but they can respond by perhaps opening a second [1340] branch in the town. That's a possible way of responding which is a form of nonprice competition which, in fact, is quite expensive and benefits the consumers in terms of convenience.

Q I am trying to get at your analysis now.

Is it possible and is it likely, as far as you know, that banks would vary the way in which they compete on a town-by-town basis because of potential competition?

A Well, I think that you are asking about how they respond to the threat of entry. I think they respond to it in large part by nonprice competition and in part —I mean prices here are a funny variable in a banking situation.

Q You would rather not consider pricing, then?

A No. Pricing is important, but this is a regulated industry, so that the possibility of interest rate variations are relatively small. They're up against regulation—the ceilings on a bank—on bank, say, payments of savings deposits quite a lot of the time.

So that nonprice competition plays a bigger role, plays a role in opening branches; it plays a role in other forms of competition that are not with the price variable.

Q Nonprice competition is more important than price competition as far as you are concerned; right?

A If you are thinking of—of—of a local [1341] situation, I think that nonprice competition is of some importance.

There's one other thing I didn't talk about here which is an important factor, I think, in bank—bank competition, which is the phenomena of which economists call credit rationing. Credit rationing is the fact that not everybody who walks through the door can get a loan. The decision who to get a loan or not is very important and very competitive, and very important to the small businessman.

So, if you think of it in terms of consumer alternatives, it's entry into Woodbridge that matters for most depositors in Woodbridge.

Q I am trying to get the effect of potential competition on existing competitors. I do not want to belabor the point, but you said potential competition should be analyzed on a town-by-town basis because commercial banks react on a town-by-town basis to potential competition. Now I am simply trying to find out how significant that is, what things they react to and what they do when they react.

A Yeah. Let me see if this is—this is helpful to you:

If you think of the situation you describe—suppose we have a statewide bank—banking system—bank, and it has branches in, let's say, forty, fifty towns. If [1342] a new bank comes into one of those fifty towns, I think that the point you brought out, that they'll react in a price manner—they would not react in a price manner, is a valid one. On the other hand, if those share entry into ten or twelve of those towns, then they have to begin to respond in a price fashion. If it's just one town, singling out one town, then I think the reaction tends to be more nonprice.

All this against the background that in banking a lot of prices are—prices even—often, in terms you are talking about, the interest rate you pay and so on, are set by state laws and they have less scope than they would, let's say, in the automobile industry.

Q You would not expect, then, that an entry by an outside bank into one town in which a big bank competes, a big bank which may have offices in many other towns—entry or threat of entry into that one town probably would not have very much of an effect on that bank, would it?

A Well, there's what is known among—in some businesses, if you just get a competitor nibble at you, at one small part of the market, you don't respond across the whole market. On the—and here it would be—if you were—if you were operating over a hundred towns, you wouldn't respond if a competitor nipped at you in one of [1343] those hundred and—towns in a dramatic way, but you might respond in a nonprice fashion.

Q But it is possible, in any event, for banks to respond differently in different parts of their service areas, if that is what you would call them? You have testified to that, haven't you?

A Well, I was speaking of nonprice competition, yes.

Q That is a significant way in which banks compete, isn't it?

A Yes.

Q Then it is also possible, I assume, for banks to respond not only on a town-by-town basis but on a—let's call it an area basis—let's call it a New Haven area basis—if they felt that it was in their best interests to do so, they could respond separately within an area, couldn't they?

A I think that they—that if they saw that there were—that branches were running in this town and that town and another town, then they might begin to respond in several towns throughout the whole system. If the—and in that sense it's an area of response.

Q Of course, some of your towns have no banking offices at all in them. You are not contending that they are markets, either, are you?

[1344] A No, they're not.

Q Those people must bank somewhere else, outside of that town; don't they?

A That's right.

Q I also note that you omitted Ansonia and Derby from your analysis.

Why did you do that?

A These—there was also Orange and Milford.

Q Yes.

A These are towns where—I understand that's the four-town area where the government alleges direct competition.

Q Right.

Both banks operate offices in Milford, don't they?

A That's my understanding.

Q And both banks operate offices in Orange?

A That's my understanding.

Q Do both banks operate offices in Derby?

A I do not think so. I think that there is one bank located close to the—I think one has a branch that's close to the town line. I'm trying to remember exactly how it went. But I don't think they both operate in Derby.

Q Neither do both operate in Ansonia; do they?

A I'm not sure of that, but I think they don't.

[1345] Q So there is one example of where a town really does not work in terms of analysis of potential competition; am I correct?

A That—that—those towns are identified for analysis of direct competition. I think you do have a problem when you have branches close to the town line. I mean any area you take is a rough approximation where it's SMSA or the State of Connecticut, a town.

Q It is conceivable that it is a fact there is competition between different banks in towns?

A That's the reason I will not call a town a relevant market.

Q There is competition between banks in different towns?

A For instance, I think it's—the bank in Woodbridge worries, I think, about the competition he gets from First New Haven—I mean from New Haven banks. But you ask would an additional entrant—then I think you are focusing on a new dimension. He's now got a competitor down the street, and that's a distinctive feature

of entry into a town; whereas additional entrant into New Haven would not matter so much, as he already has six competitors there.

Q My point is that you did not consider two towns because there was competition between them?

[1346] A That's not the reason I excluded them from the analysis, because I understood that that was a—a case where the government's alleging direct competition.

Q If there are other towns in which there was direct competition between offices of different banks in different towns, would you come to the same conclusion about the adequacy of your potential competition analysis?

THE WITNESS: Would you read the question.

(The pending question was read by the reporter as above recorded.)

A I think that—I think—I think that—don't leave the impression that, because the town is unit for potential competition, there isn't a possibility of substantial direct competition; i.e., my Woodbridge-New Haven example.

What I'm saying is that—and I don't come to the conclusion that the town is not an adequate unit—is that the distinctive thing about potential competition in this kind of setting is that the Woodbridge banker for the first time has a competitor down the street, and that adds a new dimension and he would be concerned about that.

Q Do you know where the head office of the Woodbridge Bank is?

A Not exactly.

[1347] Q Would you be surprised to know that it is about a hundred yards from the New Haven city line?

If it is, how would that affect your analysis of the effect of potential competition on this Woodbridge Bank?

A Well, it—it still has a geographically special location, because, if there's a branch a hundred feet away on the other side of the line, that would be a very close substitute. And there is a problem always about town lines which is inherent in any kind of geographical unit, but I think that—and the other thing you have to do

here is that your—your data's available not by exact geographical coordinates. You have to use a unit like the town or the SMSA, and the town is, I think, apart from the town-line problem, a better measure than the —let's say the standard metropolitan statistical area.

Q Why?

A Well, because let's look at the—the—the larger the area, the more you are getting into areas that are very large. For example, Guilford is—I drove it, from Guilford to Woodbridge. The one thing I couldn't do is locate the Woodbridge National Bank to see how far it was. And it takes, at nonrush hour, about 45 to 50 minutes.

Now, that's all in the same SMSA, and seems to me to treat that as an area of potential competition is [1348] incorrect. The towns is a much smaller area in Connecticut than the other alternatives.

Q When you analyze the effect of this merger on potential competition, you analyze the effect of that potential competition on the defendant banks, don't you? Aren't they the two most significant banks that you consider when you consider what the effect of the potential competition is?

A Well, you are in the—as I understand, the question is what happens to potential competition. Now, that's what—that means what's—happens to the defendant banks and to all other banks that are in the—in the area under analysis.

Q But the defendant banks operate offices throughout their SMSA's, don't they?

A Well, you mean, saying that, in that question, is —First New Haven is—you are only assigning it to the First New Haven—to the New Haven SMSA, and the Connecticut National only to the Bridgeport SMSA.

I think they do, although I don't think they're in every town.

[1349] Q So they would be affected, wouldn't they, by potential competition into any of the towns in their SMSA's?

A The effect would show up in the branch that's in—the particular branch that's—impact. For example, sup-

pose that a substantial part of the business is on Church Street, now, if a bank entered in Guilford, I think that would—I have forgotten exactly whether the First New Haven has a branch in Guilford, but I think it does—assume it does in the answer—then that would affect the branch in Guilford, but it would not affect the Church Street main office.

Q Why do you say that? Do you—have you made any analysis of how these banks react to a new entry? I think you testified before that you hadn't?

A It seems to me it follows from the emphasis on geographical-locational convenience than an entry into Guilford affects depositors who have a Guilford location. It doesn't affect depositors who have a Church Street location.

Q Aren't there depositors in Guilford who have alternatives on Church Street, as well as in Guilford?

A Yes, but they picked—they have plenty of alternatives now on Church Street, they've picked the Guilford location either because it's near their job, it's the town, they like to drive to Guilford. For some reason.

Now, a—an entrant would have to offer some [1350] equivalent geographic location—something that makes it equivalent in terms of geographic location to be equivalent to Guilford.

I think that one could easily conclude from the literature that convenience of location is really essential to the —an effective competitor for much of the banking business.

Q And convenience is a factor of where these people live, am I correct?

A No, not necessarily. Suppose—suppose I am a guy who gets up early in the morning and I bank before I go to work, and I live in some town quite distant from Guilford. Guilford is a convenient location for me, but it is not where I live. On the other hand, somebody else has a banking pattern where he banks near his home. Now, in each case there—there—one is banking in his home town and one is not, but they both—location matters in both cases.

Q Yes, exactly. Where a person lives, where he works,

where he shops, wherever he may go may be a convenient location for him to do banking?

A Right.

Q And is it true that in—that in the SMSA people live in one place and often work in another, so that—for many people there are convenient alternatives in other towns?

[1351] A They may not be convenient alternatives, suppose I—go back to my example, I live in Bran—in Branford, and I work in Guilford, Guilford is my preferred location. The other towns, even though I come from there, are not as convenient locations, I think that that people have locational preferences in banks.

Q Yes, exactly.

MR. CLARK: Your Honor, I think—we agreed we would stop at 3:30, and maybe we could do that now.

THE COURT: Yes. Very well. Recess until tomorrow morning at 10:30. Have a good evening.

(Court adjourned at 3:30 p.m.)

[1351]
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 14,583

UNITED STATES OF AMERICA, PLAINTIFF

vs.

THE CONNECTICUT NATIONAL BANK and THE FIRST NEW HAVEN NATIONAL BANK, DEFENDANTS

and

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, INTERVENOR

United States Court House
915 Lafayette Boulevard
Bridgeport, Connecticut

Before:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

[1352] Appearances:

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Washington, D.C.
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By: CHARLES H. McENERNEY, JR., Trial Attorney
FORD BARRETT, Trial Attorney

[1353] THE COURT: Are the parties ready to proceed?

MR. CLARK: Yes, your Honor.

MERTON J. PECK, having been previously duly sworn, resumed and testifed further as follows:

CROSS EXAMINATION CONTINUED

BY MR. CLARK:

Q Doctor Peck, yesterday you—you referred several times to the literature which relates to potential competition. Would you be more specific about that? What is it?

A A leading work is a book by Joe Baine, which is called Barriers to New Competition, which was published by the Harvard University Press sometime in the '50's. It is discussed also in F. M. Sheer, a book published by Rand McNally. I have forgotten the exact title. There have also been several articles on this, there's also an article which deals with conglomerates written by Donald Turner, and there have been other pieces, but those are the ones that come to mind.

Q And you have also relied, I guess, on the Supreme Court decisions? Is that a source for you?

A I read some of the opinions, I'm not an expert on all the—all the opinions.

Q Have you yourself written any articles on the subject?

[1354] A I wrote a—it is a chapter in the book on the aluminum industry. And it—that's the most extensive discussion, I have not written an article that's entitled: potential competition.

Q What is that chapter entitled?

A I think it's called something about entry into the aluminum industry. It's about the entry process into the aluminum industry.

Q About the entry?

A About the entry of new firms into the aluminum industry.

Q Do you deal with the subject of the effect of potential competition on—

A I discuss—it is more about the actual process of entry, but I discuss Baine's work in that chapter. At that time I think—the time I wrote that Baine's work was relatively new and there is a discussion of Baine's findings and whether they're applicable to the aluminum industry.

Q And were they applicable to the aluminum industry?

A Well, the point that Baine was making was how does the possibility of entry affect competitors. I concluded they were—that particular hypothetical was not applicable to the aluminum industry.

Q And you have made no such study relating to banking?

[1355] A Except in the—as preparation for this case; I have never published anything.

Q Well, you have made no study, though, empirical study, to determine what effect potential entrants do have in banking, though, have you?

A No, I have not.

Q I think you testified yesterday that actual competi-

tion is more important than potential competition, am I correct?

A That is right.

Q In other words, in markets where actual competition is more significant, greater, then potential competition has a lesser effect, is that right?

A The testimony was that for a given competitor, if he is an actual competitor, he exercises more influence that he does as a potential competitor.

Now, your question was if there—as I recall it— excuse me. Perhaps the reporter should read the question.

Q I'll try to clarify it for you. If there is more competition in the market, is potential competition as significant to the competitors in that market as it would be if there was less competition? Existing competition?

A I follow it.

The usual view, I think probably on balance the correct view, is that if a market has a large number of actual [1356] competitors, that is the process which sets the price and the potential competition add a little more, suppose we had a market with a hundred actual competitors, an extreme example, then the fact there was a hundred and first competitor waiting in the wings would matter very little because the process between—the competition between the actual competitors would drive the price down close enough to cost that the potential competition is not an additional factor.

Q What is the proxy or way in which economists customarily measure competition in a market? It is concentration, is it not?

A That's the most commonly used proxy. There is an—extensive literature as to how good a proxy it is and dispute as to how valuable it is, but it is still the most common proxy.

In part, that's because it is computed every—after every census of manufacturers by the Bureau of Census, so it is available, but it is also—there's dispute, but I would consider that that's the most common proxy.

People have other different proxies like—but that's the most common one.

Q Where concentration is high in the market, poten-

tial competition would have a more significant effect, wouldn't it?

A That's right, as a general proposition.

[1357] BY MR. CLARK:

Q Did you consider the concentration in New Haven?

A No, I did not, because I think, as I testified in my direct testimony, that there are two ways of looking at the problem of the effect of the merger on potential competition.

The first way is to try and determine the significance of potential competition, and that does lead you into the question of what is actual competition.

The second way is to ask what does a merger do to the structure of potential competition. I suppose implicitly in that is an assumption it's important.

And I chose the second route, which seemed to me might lead to more meaningful results than the first, where you get into much more subjective judgmental factors.

Q But the structure of potential competition—that is, whether or not it is effective in a market—isn't that related to the extent of concentration within that market?

A Yes. But I think—perhaps I'm not making myself clear here. Suppose you had a market in which—the question I think you want to know the answer to is what is the effect of the merger on potential competition.

Now, suppose we had a market in which actual [1358] competition was so effective the potential competition added little more. Now, in that market you would still look and see does the merger have much impact on potential competition. Suppose it does not; well, then you don't need to reach the next question, which is, if it—if it does, how important it is.

I'm trying to distinguish between asking what happens to potential competition and the question of how important potential competition is.

Q Potential competition is important when there is a concentrated market, isn't it?

A That's right, on the other—

Q You did not consider the concentration in any market in which you evaluated potential competition, did you?

A The—that is right, with the exception of there were some questions, I believe, from his Honor about Hartford, which I mentioned concentration. But, if the merger does little to the structure of potential competition then it seems to me that answers the question whether it's important or not.

Now, it could be that these markets—I'm not—are so unconcentrated that potential competition is unimportant. Then my analysis really says that the merger does little to the structure of potential competitors. But—[1359] and so one doesn't need to know the answer to the question whether it's important or not.

The second possibility is that the barriers to entry in the state banking laws are such that potential competition is not very important, in which case one would still be interested in the question of whether the merger has much impact on the structure of potential competition.

In either case it's unimportant. But it's also interesting to know the answer to the question of whether the merger has impact on potential competition. I'm trying to draw a distinction—I don't want to over-answer your question here—between—the question whether it's important and what happens because of the merger to potential competition.

Q Can you name one study in which potential competition was analyzed without consideration of concentration?

A I'm—the problem is that there's really very few analyses in—of the actual impact of—of—of—of potential competition. I'm trying to think of the studies one might enumerate, and there are rather few in number. Baine's study does concentration.

Q You cannot name one court case, can you, involving potential competition where there was not also [1360] consideration of concentration?

A I can't—that's right, I cannot.

Q Yesterday we talked about various means of entry

into a market. Some, you said, were pro-competitive and some were anti-competitive—or one, at least, was anti. I think you said where a leading potential entrant acquires a firm with a leading market share, that is anti-competitive.

Am I correctly describing your testimony?

A My recollection is I said that that is neutral, but I would be glad to—will you refresh me from the transcript.

Q I think we posed a hypothetical of 80 percent—

A Oh, that's right. In that case I did say that it would be anti-competitive. That was a case, as I recall, where three firms had 80 percent of the market and acquisition was by a leading potential entrant who had 40—and the acquired firm had 40 percent of the market.

Q That would be anti-competitive acquisition?

A That's what I testified to yesterday.

Q Are you aware that in 1968-'69 there was a proposed merger between Connecticut Bank & Trust and Connecticut National Bank?

A I think I've been told, but that exhausts my [1361] knowledge.

Q Let's assume that such a merger was proposed. How would you evaluate that merger? Would you consider that to be anticompetitive?

A Would you state names of the banks again.

Q Connecticut Bank & Trust, of course, the Hartford bank, one of the two larger banks in Connecticut, and the CNB, one of the defendants here.

A That is a merger between the second largest bank and the fourth or fifth largest bank?

Q In the state?

A In the state, yes.

Q I think they were number three at the time; CNB was either third or fourth.

A Well, the first—the first thing I would say is that—the analysis I have deals with potential competition. I don't know what the impact of that particular merger—because I can't recall offhand what's the branching structure.

Q Let's assume the branches were not in actual competition.

A Well, then I would—I would like to—to carry out the kind of analysis that I've carried out here. It's very hard to give an off-the-cuff answer, for me, because I—I can't recall exactly where they're located and the [1362] relative size would mean—it was what, three and what?

Q CBT was either first or second. As you know, they have been very close with Hartford National.

A Yes.

Q Connecticut National Bank in the state I think was third statewide, but, as they do not, they only operated in this area, and Connecticut National Bank had the leading share in the Bridgeport market, whether it be Bridgeport town or Bridgeport SMSA, as much as 40 percent.

Don't you think—

THE COURT: I hope we are not opening up an area of—really, that is not only irrelevant to this case but might induce rebuttal, and we will be trying two merger cases here, CBT and CNB.

MR. REYCRAFT: I have not wanted to object, your Honor. I do think it is objectionable.

I think Dr. Peck has said he does not know enough about it to express an opinion. It seems to me that is the answer.

THE COURT: The third thing is, obviously, he has admitted he is at a great disadvantage, he needs a lot more facts—and I suppose that all of us would before we could say it was violative of any laws. We have to know a lot more about it.

[1363] MR. REYCRAFT: This Court is getting a lot of testimony on another merger, and I do not see how Dr. Peck can answer it on the basis of a hypothetical.

THE COURT: Right.

I think I will sustain my own objection.

Go ahead.

BY MR. CLARK:

Q You testified yesterday, Dr. Peck, at one time,

at least, about concentration, the only time that I recall, and you dealt with the concentrated market in Hartford; and you said, I think, that the extent of this concentration might actually discourage entry by some banks.

Have I correctly described your testimony?

A Yes. I think it was imbedded in a joining sentence, that it was not only concentrated but it was the headquarters city of the two largest banks in the state. I think that was right in there with the other. I don't recall exactly, but I did say that those two facts might discourage entry, the fact that it was concentrated and the fact that it was the headquarters of the two—the headquarters city of the state's two largest banks.

Q Would you consider that to be a barrier to entry, I take it?

[1364] A Well, the fact that it discourages would be a barrier to entry.

Q Although the larger the banks are in a market the higher the barriers to entry are?

A Well, you can't have a straight linear relationship. You can't enunciate that as a general proposition. I think you can enunciate, without as firm an empirical support as you like, that where there are two existing competitors that are substantially larger than any of the potential competitors it does tend to discourage entry.

Q How about when there is one existing competitor that is substantially larger than any potential competitor?

A Suppose we had a situation, to take the extreme, that one seller had 90 percent of an area, or 95 percent. I think that would tend to discourage entry. You would have to know, of course, a lot of other facts, but that fact alone would discourage entry.

But the answer to your question is yes.

Q So you would want to avoid doing anything, I take it, that would increase this leading seller in this market but would raise barriers to entry?

A If he's already got 95—I think I said 90 percent of the market or 90 percent of this geographical area that stands out as a distinctive entry area, I suppose [1365] you would, but again you would want to know

additional facts about—I think—to make a final judgment.

Q You have enough facts to testify that there are barriers to entry in Hartford because of the size of those two banks there, don't you? What facts distinguish Hartford from any other market in terms of barriers to entry?

A Well, it seems to me it has some relevance, and I don't know exactly what weight to give to it, but not only are these banks large in Hartford, they're big all over the state.

Suppose you take the other extreme. My recollection is the Woodbridge Bank has a hundred percent of the Woodbridge area, but the fact it's not a large bank all over the state I think has some bearing.

What I'm trying to say is perhaps that you look not only at the size in that market but also its general size in the area—in the state.

Q So that the size of a bank within a market can raise barriers to entry as to outside potential entrants, is that correct, as a general proposition?

A Well, if it's a significant size difference relative to the potential entrants, then I think that the general proposition holds.

Q What is the significant difference?

[1366] A Well, I think that would vary with the industry. I don't think you can give it a general answer. I was trying to recall.

I believe in the—the report of President Nixon's Committee on Antitrust and Productivity, that was chairmanned by Professor Stigler, they talk about some general rule to try and enunciate—but it was so qualified that I don't think you can have a general rule; there's a size disparity between firms.

Q But as a general rule you do accept that proposition, don't you?

A Yes.

Q Mergers which substantially increase the size of a competitor within its own market, then, could raise barriers to entry, couldn't they?

A That's right. It would depend on how much the size disparities are, but the—all other things being equal—ceteris paribus, are economists say—there is that disparity.

Q You say what the disparity is is a matter of study within a particular industry; is that correct?

A I think it would—it would vary very much from industry to industry. When you start talking about manufacturing you get into questions of economies of scale, [1367] capital requirements, the minimum scale to be—very low costs, for a new entrant to potential entrant. As I recall, Baine has five or six conditions of entry—a good number. I haven't got all of them.

Q You did not study economies of scale with relation to this merger, did you?

A No, I have not.

Q Have you ever conducted economies of scale in banking?

A In banking? No, I've looked a bit at the literature but I'm not an expert on economies of scale.

Q You have no opinion, then, as to whether or not this merger would or would not provide economies of scale for the defendants?

A Have no opinion on it.

Q Dr. Peck, you also have no opinion as to whether or not towns are banking markets in Connecticut; am I correct?

A That is correct if you qualify with the word—"market" with the term—the term "relevant market," as is used in an antitrust sense, I do have an opinion of whether it is the right unit of analysis of potential competition.

Q You have no opinion, then, as to whether or not they are relevant markets used in an antitrust sense; correct?

[1368] A That is right.

Q You admit that there is competition between banks in different towns in Connecticut?

A That is right.

Q You admit that, for example, in Woodbridge the

Bank of Woodbridge may hold only 20 to 30 percent of the total deposits of Woodbridge residents?

A That is a possibility.

Q Dr. Stokes testified to that. You have no reason to dispute that, do you?

A I have no reason to dispute that.

Q You admit that actual competition is more important than potential competition; am I correct?

A That is right.

Q You admit that you have made no studies of banking markets, how they are defined?

THE WITNESS: I'm sorry, would you read the last —I couldn't catch the last phrase there.

(The last phrase in the pending question was read by the reporter as above recorded.)

A The questions I've looked at in relationship to geography are only in relationship to the analysis of potential competition. I have made no wider study of, let's say, for example, the relationship of New York banks to the [1369] Connecticut market or within the state.

Q You have made no studies as to how banks actually react to potential competition?

A That's right, I have not.

Q One of the criteria which you did use in your analysis is proximity, proximity of banks, I take it, through their branches, to a town that you are studying; is that correct?

A That's right.

Q Do you give proximity equal weight to size?

A I think they're both important. I think that when you are talking about smaller towns they take a heavy weight; when you are talking about larger towns, I give somewhat less weight to geographic proximity. That is the reason I did a separate analysis of the towns over fifty thousand. I don't know what the exact relative weights of these should be; therefore, my tables do not combine geographic proximity and size so that, for instance, geographic proximity is a third and size is two-thirds. Rather, the tables are constructed in such

a way that both size and geographic proximity stand as independent variables.

Q But you made no study, did you, as to how significant proximity is as to any market?

A Well, I think it's—I've looked at some of the [1370] banking literature, and in its—for instance, some people argue that its nearbyness, some people say within a hundred miles—that I think was the testimony of a witness in a bank merger case in Mississippi—so there seems to be—

Q You know that is the legal limit of branching?

A I see. But, as I recall that testimony—you know it better than I do, Mr. Clark—that geographic proximity is a common variable, but I don't—and therefore I think it—it is important.

Q Because it was discussed in Mississippi you think—

A No. I think that there's a lot of—you can—the reason it's important, from two factors:

I think that banking has characteristics of retailing business, and in retailing business geographic proximity is important.

The second thing is that the literature always talks about geographic proximity in expansion. It isn't an invariant rule; people do skip over towns. But there is an importance of geographic proximity.

And the other thing that influenced me in geographic proximity—including geographic proximity—is it was mentioned in plaintiff's answers.

[1371] Q Well, how did you compute the differences in distances between these—these banks ranked by proximity?

A The—we did not have data of the actual mileage branch by branch, what we—what was done, was the following—and it is a little—perhaps it was not clear in my direct testimony—the distance from center of town to center of town was considered the measure.

All the branches in, let's say—we're talking about Wilton, Connecticut, and I have forgotten the exact name of the town, but the town nearby that has several

branches—we assume that they're all—in effect, all in the center of town.

Now, suppose that town has four branches, then we—as between the four branches we took size to break ties, so to speak. Now, this work on geographic proximity which—the actual looking at the analysis of data on geographic proximity was done under my supervision, but by Mr. Terzakis.

Q Let's just get it clear now what you did. You—you took—you simply used the center of each town, is that correct, without any attempt to actually locate the branch that you are talking about, am I correct?

A That's right.

Q And so if the branch was, in fact, on a town line or somewhere else, then your—your measurement would be inaccurate, wouldn't it?

[1372] A As opposed to a situation where the other branch was, let's say, in the center of the town?

Q Sure.

A That's right. It would be a—inaccurate. Connecticut towns, by and large, are relatively small since—if you—the State itself is not one of the larger states in the union.

Q Well, that leads to my next question, then.

A Yeah.

Q Did you write down anywhere, do you have available anywhere, the actual mileage differences between these—these banks according—ranked according to proximity?

A No, I do not. And I think that—that it is—center of town to center of town in the analysis.

Q Did you ever try to actually measure the differences in distances?

A Well, we—the analysis when it is done on a large scale map—and we did not actually measure it by driving it, for example.

Q Did you ever attempt any correlations between any of these distances and actual branching patterns to find out if there was a relationship between proximity and branching?

A No, I did not do a correlation study. I think that there is an advantage to expanding into nearby towns [1373] in two ways. The first way is that: if you have a branch in a nearby town, then moving into the next town is some advantage because people are familiar with your name.

Second, there are some operating economies in moving out—moving out to the next town.

Now, I want to be clear. People could skip towns, but geographic proximity is a—remains, to me, a factor.

Q But you have never studied it to find out how much of a factor, have you?

A Well, I have looked at the maps, and it seems to me the geographic proximity—people do tend to expand into nearby towns. I have not done, let's say, a correlation study of the expansion pattern of town by town.

Q Well, all right. Let's take your Bridgeport data sheet, and you show Bank of Stratford ranked first in proximity, First New Haven ranked fifth, First New Haven located in Milford, Bank of Stratford obviously located in Stratford. Do you know what the mileage difference is there between those two banks and Bridgeport?

(Question read.)

A No, I don't.

Q Do you have any reason to believe that that mileage difference, whatever it is, is significant in determining whether or not First New Haven is a more likely entrant into [1374] Bridgeport than Bank of Stratford?

A I don't know what the mileage difference is, I have no opinion on that.

Q Right, and you didn't compute any mileage differences, did you—

A No.

Q —in any of your proximity—

A No.

Q Well, let's continue with your Bridgeport market. Which bank do you think would be a more effective new entrant, Bank of Stratford or Hartford National Bank?

A Well, as I—well, the Hartford National Bank, I

think as I testified, when you would come to the towns over 50,000 size, may matter more than it does in the smaller towns, and, therefore, I did a tabulation which stresses size only for those towns.

Q So at least as far as Bridgeport is concerned, you are willing to minimize, or at least reduce, the significance of proximity as it relates to potential competition?

A Well, I think that that is right.

Q Pardon me. At least as it refers to the smaller banks and not the larger ones?

A That is right. I think that my view is when you are talking about larger towns, size gets a heavier weight than [1375] geographic proximity; when you are talking about smaller towns, I don't think the issue is at all clear. Because banks in small towns do expand into adjoining towns.

Q They expand, but did you consider what the effect of that expansion is? Did you consider that one potential entrant might be more effective than another, even though they both might be equally likely to expand into a small town?

A I see that—the question is: as between banks, did I consider that bank A might add more to competition—

Q That's right.

A —than bank B? No, I did not. I think that that is a difficult question, because it partly turns on managerial procedures and changes from time to time.

I suppose all one could say as a general proposition is that larger banks might—all other things being equal, managerial problems—make a bigger impact than smaller banks.

Q So assuming that Hartford National and Bank of Stratford were equally likely to go into Bridgeport, you aren't testifying, are you, that elimination of either one would have the same effect?

A In other words, if—if the—if Hartford National disappeared from this roster and the Bank of Stratford disappeared from this roster, would there be the same effect?

No. I think that the bigger loss—particularly [1376] for the larger towns—is from the Hartford National

Bank. I think you have to be also a little careful when you are talking about smaller towns, that a small bank expanding into an area could add more than a larger bank putting a branch, simply because that's one of its three branches, so it take it much more seriously, but we're talking about the larger towns here, and I agree with you that the loss of Hartford National is greater than the loss of the Bank of Stratford.

Q So—now, you mentioned that you did a separate analysis for the large towns, did you—do you have an exhibit that shows the effect of this consolidation by size for the large towns?

A The exhibit I was thinking of—first, there was a—is—just one moment.

D-30. Which is not by leading bank criteria, but indicates the number of banks that remain capable of statewide branching. It deals with the 15 towns that have population over 50,000.

Q That exhibit deals only, then, with the number of banks remaining, number of potential entrants, right?

A That's right.

Q You don't have an exhibit that shows the effects of this consolidation by size on the 15 largest towns?

A No, I do not.

[1377] Q And size, you said, is perhaps—is undoubtedly more important than proximity as to those towns?

A That's right.

Q Well, perhaps—

A No, I should say one other thing, that the data sheets could be easily—are—do contain the data for the 15 towns, but there's no exhibit compiling them; the other thing is: I discussed the three largest towns individually, Hartford, Bridgeport and New Haven.

Q Now, another factor which—which is relevant, and I think you agree, to identification of potential entrants, is prior expansion history?

A Uh-huh.

Q Did you testify that it correlates exactly with size?

A No, I said it was highly correlated.

Let me describe the basis of that since I don't think the direct testimony went into that in any detail. What I did there was consider—or tabulate the number of towns in which the larger banks were operating in 1954 from the Bank Commissioner's report. Then I tabulated the number of towns that they were operating—operating in the latest Bank Commissioner's report. The difference between those were the number of towns entered in the last 15 years. I then ranked all those banks by [1378] the number of towns they entered and compared the rank by 1971 asset deposits.

The way of determining whether those ranks correspond is to compute what is called a rank correlation. I used Tyles rank correlation, which gave me .769, where 1.0 would be perfect correlation. That is highly correlated and significant at the 1% level.

So that it seemed to me there was a high degree of correlation. I have—for—to illustrate, for example, the Hartford National was one in asset size, it was second by rank of new towns entered; CBT was second by asset size—I'm sorry, deposit size, it should be—and first in the number of new towns entered. UT was third in deposits and was tied with CBT for the number of towns entered. And so on, and so it correlations were computed.

Q That analysis, then, does not distinguish between the way banks entered new markets, does it?

A No, it only deals with how many towns do they operate 15 years ago, how many towns do they operate now.

Q And so the—the Union Trust merger, which would have added several towns at one jump to that bank, you would equate to several de novo expansions by some other bank, wouldn't you?

A It doesn't go into the question of: did they expand by merger, de novo branchings—

[1379] Q My question was, then, that the Union Trust expansion is not differentiated between de novo entry, for example, by other banks?

A That is right. That is right.

Q What is the most procompetitive form of expansion?

A Well, I think I discussed that yesterday, that if you have, let's say, a limited number of competitors in the market, a form of expansion that adds one more, all other things being equal, is procompetitive.

Q What is the most procompetitive form of expansion?

A It would be a method that added one more competitive—

Q And that would include de novo—in fact, it would have to be de novo expansion, wouldn't it? That's the only method that adds one more competitor?

A That's right. Now you get into the question of how differences—that's a very simple—simplistic proposition, but it's—it simply says that more competitors are better than fewer.

Q Do you know which bank has been more active in de novo branching than any other?

A No, I do not, because my analysis did not distinguish between, let's say, a smaller bank entering that way as opposed to de novo branching.

Q Now, did it distinguish between acquiring a large bank, [1380] did it?

A That's right.

Q Well, would you be surprised to know that Connecticut National Bank is—is the most—has been most active in de novo branching? I'll show you P-70, which shows various forms of expansion by the—by the different banks. You note that the Connecticut National Bank had more de novo branching than any other bank in the State as of the end of last year.

A Let me ask you a—let me—

Q First of all, that is the case, isn't it?

A It has 33 de novo branches, and the next, Connecticut Bank and Trust, has 32 de novo branches from the period 1955 to 1971.

Could I ask a question? Does this exhibit distinguish between de novo branches in new towns and de novo branches in the same town? For example, does it distinguish between opening up new branches, let's say, in

Bridgeport itself and opening new branches in Wilton, Connecticut, for example?

Q Well, you could see from the exhibit that it doesn't. But it shows, doesn't it, that CNB, perhaps one-third the size of the two Hartford banks, has nevertheless seen fit to open more branches than either of them?

A Well, the exhibit shows that by Hartford National —one thing I have never understood in talking about de novo branches, [1381] in my view, a distinction should be drawn between opening a de novo branch in a new town because that adds a competitor in Wilton, Connecticut, and opening a new—another new branch in Bridgeport because a housing development went up there, but this table doesn't show that.

In my analysis I was concerned about moving into new towns, and that's the reason I didn't take a count of branch, but there may be a difference of view here of what's important.

Q And it's also important, isn't it, that entry into new towns be procompetitive, isn't it? Since we're looking at possible procompetitive expansion by these potential entrants?

A Well, I think—I think that—that, I think, follows from what I have said previous. Although, actually, in this particular analysis, I was not concerned—when I described the rank relation—I was not concerned with whether the particular form of expansion was procompetitive, but demonstrated willingness to expand which —I was trying to track the government's own criteria there.

Q Do you have D-26 there, Doctor Peck?

A Yes, I do.

Q Now, I suppose we'll have to use this in the absence of any exhibit which shows us effect on the 15 largest towns by size only. But if—now—now, you testified that— [1382] that two of the most significant effects upon potential competition would be in New Haven, which you find there under the second ranked by size, and in Bridgeport where the—where the third ranked by size is —is effect—am I not correct?

A Yes.

Q Whatever that effect is? Right?

A Yes.

Q And you also testified that perhaps proximity is not so important when you are talking about towns of this size, didn't you?

A I said it has lesser weight, yes.

Q So if we could eliminate proximity for purposes of this discussion, then, and move those—all those numbers over there to the right-hand column, then we see that New Haven and Bridgeport are right at the top, aren't they, in terms of effect on potential competition?

A Well, if you disregard geographic proximity so that you are making essentially a movement over, New Haven would be two, as I follow—track the table, and Bridgeport three by size.

I don't know, just let me check that to make sure that's consistent with the data sheets. I think it is. Yes, Bridgeport is three and—taking account of sizes only—and New Haven is two.

[1383] Q By the way, are you aware that the interim between the end of last year, Connecticut National Bank has surpassed State National Bank in terms of total deposits?

A Yes, I—I am aware that your—your exhibit, which is six months later, shows a—a decline in the ranking, as I recall, of the First New Haven and an increasing in the ranking of the Connecticut National.

I did look at the effect of these changes on my tables, but I did not consider the change—the difference substantial.

Q Well, at least as far as New Haven is concerned, then Connecticut National Bank is now the largest potential entrant, isn't it?

A I think you are right, but—

Q All right. Now, it also happens that in these towns where the effect of the elimination of potential entry by size is most significant, it also happens that these are the two towns where the defendant banks are headquartered, did you consider that in your analysis?

A Well, that makes some—that's one of the factors that makes them closed towns.

Q That's the only way that you considered it?

A I—that is right.

Q And it also happens that in both cases these banks being [1384] headquartered there, they hold more deposits from depositors within that town than any other bank ,but you didn't consider that, did you?

A No, I did not.

Q And you didn't think it important that this market share might be as much as 40% in both cases?

A No, I was looking—well, what I looked at I think is apparent here.

Q And you didn't consider the fact that Connecticut National Bank, at least, has established more de novo branches than any other bank, de novo branching being the most procompetitive form of expansion?

A No, I did not consider that. I—I consider—I would like to qualify one thing. It—probably de novo branching into new towns, rather than just opening another branch in an existing neighborhood.

Q Yes. You didn't consider the fact, did you, that Connecticut National Bank recently applied for a de novo branch in West Haven, did you?

A That application was not approved.

Q That's right. You didn't consider that a fact, though?

A Well, it struck me that it was not a very major factor in potential competition when it applied for a branch and was disapproved. I think other competitors would discount it, so that [1385] I—I was aware of that fact. It seemed to me it cuts both ways.

Q It—it would make the banks in that market more aware of Connecticut National Bank's interest, wouldn't it?

A Yes, but the fact that it was disapproved, it would seem to me to lead them to discount it as a threat of new entry, so I think it does cut both ways.

Q It would also be an objective indication, wouldn't it, that Connecticut National Bank does have an interest in this market, wouldn't it?

A It certainly would. It's also an objective indication that they're unlikely in the immediate future, it seems to me, to be an important factor in potential competition.

Q Why? Because it was disapproved?

A Because it was disapproved, that's right.

Q Have you considered other locations where there have been applications for branches that have been disapproved?

A I don't know all those locations, I just happen to know that particular one.

Q You haven't investigated to see whether or not banks may apply later on and get approval, have you?

A No, I have not.

Q And you don't know to what extent Connecticut National Bank has been turned down in other towns and reapplied as early [1386] as six months later and received approval, do you?

A I do not know that.

Q And if they had done so in several towns, three, four, five or six, wouldn't that be relevant?

A Would you read that?

(Question read.)

A I take it from the question "done so" is applied, rejected, later approved?

Q Reapplied. Later approved?

A That's a relevant fact, yes.

Q You didn't consider the extent to which CNB now fully covers its present service area with branches, did you? Did you consider at all how potential entrants are presently situated in terms of the markets that they serve?

A You mean what was the—the total geographic pattern in the sense of coverage? I mean, would an example be—for example, Union Trust is up here, and then it has another enclave down here?

Q Right, right.

A I have looked at those maps, but I didn't make them a formal part of my analysis.

Q If a bank could be considered to be pretty well covering the area which it presently tries to serve with

branches, would you think it would be relevant, then, to conclude that they [1387] might be more likely to consider expansion into new areas?

A That is if it's got—for example, if it has a branch in every town in the area—

Q Right.

A —and—well, if its—if its expansion possibilities are exhausted at home, I suppose aggressive managements would think about going into new areas.

Q But you didn't consider that factor, did you, when you made your analysis?

A No.

THE COURT: Perhaps this is best left for oral argument, but since you brought it up and since the expert has said it is a relevant fact, the issue of the unwillingness of the Comptroller to approve de novo branching is one that you are saying is really not too important, because apparently what happens is that it is a policy of the Comptroller to deny you the first time, but grant you the second?

MR. CLARK: Well, I can't speak for the Comptroller, your Honor.

THE COURT: You see, in his brief, the Comptroller states that he looks with disfavor upon de novo branching in Connecticut, and if my recollection is correct, he says something to the effect [1388] that the regional administrator or someone with a title like that, also disapproves of this type of entry into new markets.

Now, is this a good time for me to ask you what the government's position is on that, since you brought it up on cross and since the witness says: well, it is a relevant factor if there's evidence that the Comptroller turns you down, but you apply six months later and they'll let you in? How do you back that up? Would you prefer to do it by brief, in oral argument, or would you like to answer it now?

MR. CLARK: Well, I can address myself to it now, your Honor.

THE COURT: Yes.

MR. CLARK: Certainly, I'll want to come back to that. Banking is a regulated industry and entry must be

approved both by merger and—and de novo branching. I look at—I look at the objective fact, I look at the history in this State, and I see how the number of branches has just practically exploded over the past few years. I see how often it is the case that a bank may apply, be turned down, reapply and be admitted. And I se how, in fact, seldom a bank is turned down at all compared [1389] to total number of applications.

I see how the State's banking commissioner is so overloaded with—with applications that he can't take any more. But I—I see how often he's approved these applications.

So we say, your Honor, that—that the regulatory issue when—when looked at objectively, is—is not a factor in this case, and that merely the fact that—that CNB was —was denied in West Haven should not, and plainly does not, foreclose CNB for all time from entering that market, not only by—by de novo branching, but possibly by other means, and more than, I think it is very significant that CNB did actually try. They—they—this is an objective indication of their interest in entering in this manner, it is important not only for the identification of CNB as a potential entrant, but also because there is a factor which all of the banks in New Haven aware of, and Doctor Peck has testified that banks react according to what they perceive potential competition to be.

Surely, they perceive Connecticut National Bank as a big bank sitting right down the road ready and willing to enter de novo.

[1390] THE COURT: All right.

BY MR. CLARK:

Q But to return to New Haven, Doctor Peck, we have identified Connecticut National Bank now as the largest potential entrant, we have identified them as a bank with a significant history in de novo branching, we have identified them as a bank which now presently pretty well covers the area which it purports to serve, we have identified them as a bank which has already expressed an interest in entering de novo; wouldn't you agree that

Connecticut National Bank is the most significant potential entrant into New Haven?

A Well, I think that, as I testified on my direct, it was number two, the additional facts you gave me indicated it's moved up to number one in size, but even when it was one versus two, it happens those two banks are very close together and it's a swing of five to ten million deposits will change the rankings a bit, but as I at the —the fact that it has moved by—from one to two would not change my view of it.

It is by size, by definition, of my method—moved now from number one to number two when the difference was very small.

I went on to talk about New Haven, the fact of—that there are—the Second National is the only bank that could be acquired as a method of entry, in other words, [1391] I talked about the methods of entry.

Q Yes, but you said you didn't consider them when you made your conclusion about potential competition, didn't you?

A Well, my conclusions—was not based on that, it was based on—I said those were additive factors, I believe I tried to be clear on that. But this is a market where I think the earlier testimony indicates it is number two, it's moved slightly to number one, I observed that there remain after the merger four banks that are identified by the government as capable of statewide operations. The only new fact from the previous one is an increase, as I recall, of Connecticut National's deposits of—by—some rather small figure, so it moves ahead of State National, but that would not change the view I expressed on direct testimony.

[1392] BY MR. CLARK:

Q But you would testify, wouldn't you, that Connecticut National Bank is the most significant potential entrant into New Haven?

A It ranks first by size, yes.

Q So that your answer is yes?

A That's right, it's number one by size.

Q Is it the most significant potential entrant into New Haven?

A To the extent—yes.

Q You testified with relation to an exhibit, D-31. Do you have that?

A I have it before me, Mr. Clark.

Q D-31 does show population per bank office—

A That's right.

Q —in the fifteen largest towns.

But you are not testifying, are you, that banks never enter a town where the entry would reduce the population per bank office?

A No. I tried to indicate several qualifications to this exhibit. It does give a measure of the number of banks that are now there that seem to be supported by the present population per bank office, and that is all.

Q In fact, every entry, just by definition, reduces [1393] that ratio, doesn't it?

A Well, if there's a substantial growth of population in the town, then it's unclear; the population growth is—will offset the reduction, and it depends on the numbers whether that—

Q At least as of the day of that entry, the ratio, of course, is lower than it was the day before, isn't it?

A That's axiomatic.

Q Yes.

I think you testified that you would expect the population per bank office ratio to continue to decrease in the future, didn't you?

A No, that isn't my recollection. I said that one qualification was that the population per bank office has been tending downward. I don't think I made any projection. I said that it's a qualification that should be noted. But I don't know that I would project the present trend linearly.

I noticed that—my recollection is that there were four applications a month in the last year before the Comptroller closed—the State Banking Commissioner closed the number of applications. You could—if you ran that trend out linearly, you would have a bank on every

corner, I think, by the year 2000. So I don't think you extrapolate exactly present trend.

[1394] Q Of course. But at least the trend shows the number of applications is, in fact, rising, right up until the time his office got overloaded?

A Well, certainly this—this last one looks as if they are rising. I don't—I think there are cycles in these things, because of economic conditions and so on. So that I—I would want to know a lot more before I said anything about trend. I was just—the only data I know—have firmly in my mind—is the last twelve months.

Q At least, then, you are not testifying that this ratio will not be reduced in the future; are you?

A No. I think I qualify that in my direct to say that that was a factor, or a caveat, if you like, to this table.

Q Do you know to what extent this ratio has been reduced in the past fifteen years, over-all?

A I know it's declined significantly, but I can't remember the actual—how the numbers moved.

Q So at least as of fifteen years ago it certainly would have been an error to say that, because the ratio is such and such today, there is not enough room for perhaps more than one or two potential entrants into a town? That would have been an error, wouldn't it?

A I wish I knew exactly what the ratio was fifteen [1395] years ago, but it would have been error assuming it's—

Q You did not inquire as to what that ratio was, did you?

A I did not have—ever get the figure that I really needed for making that inference.

Q You did not think that was relevant, did you?

A I think—I was—I thought that because of the differences in—in trend and that there are cycles, that it was hazardous to project a trend of banking—population per bank office for the future; and so this is what it is today, recognizing it might go down.

One of the things I've noticed is a lot of the discussion of the impact of electronic data processing on bank branch offices, and I frankly am not enough of an expert

to say which way it would go. The rising cost of data processing may have one effect; the development of terminal equipment may have another. So I'm—I defer to the bank operating officers.

Q You heard Dr. Myles testify, didn't you, that it is conceivable that with improvements in technology there could be a bank branch on every corner? I do not know —were you here when he testified?

A No, I did not hear his testimony.

Q That would certainly affect your—

[1396] A Yeah. I heard the other argument, which —which is that the checks for society will mean that there will be no branches.

Q If Dr. Myles is correct—and, of course, this is his area of expertise—it would certainly affect this population per bank ratio test, wouldn't it?

A That is right.

But I'm trying to recall—we're getting into areas I don't—I think I'm perhaps being unduly speculative. But I'm trying to recall Mr.—Professor Williams, who is the professor of banking, testified, to my recollection, in the Maryland case—

MR. CLARK: He did not testify here, your Honor. I ask that that be stricken.

THE COURT: To the extent you can answer the questions yes or no, I think you should try to, particularly if it is outside the scope of your expertise.

I think we should try to move along, because the witness is telling the Court that he is answering but it is speculative and so forth, and, really, the Court is not interested in speculation. If there are areas where he does not want to give an opinion, I think he should so state, and I think [1397] you ought to get on to something else.

MR. CLARK: Yes, sir.

BY MR. CLARK:

Q I take it, then, you did not compare the population per bank office ratio in Connecticut with that in other states, did you?

A No, I did not. I had—I think it's a bit lower.

I had at one time the figure for the national, but I did not make an exact comparison.

Q If it were higher than the national average, would that be relevant to you?

A Well, I think you have to be careful in making comparisons across state, because economic conditions vary so much from state to state. But I want to indicate that I did not do an elaborate analysis, and I have no opinion about Connecticut population per bank office relative to other ones.

Q Did you think it relevant to compute a population per bank ratio, not bank office but—

A I don't know quite what that would be relevant to.

Q Wouldn't the population per bank office ratio tell you the number of competitors in a market compared to the population, as opposed to the number of—

A I see.

[1398] Q —offices?

A I see.

I think that this would be equivalent to what are the competitive alternatives counting banks—that is, not how many offices they have but how many banks there are in a town?

Q That is right.

A My recollection is there's a defendants' exhibit on this, but I didn't compute that.

Q Yes. But that exhibit does not use population; it simply shows the number of alternatives in a town.

But you said you did not use that; right?

A No.

Q D-31, then, does not show how many banks are in these towns, does it?

A No, it does not. It—it's based on the number of branches.

THE COURT: See, if you could just go back over the last three questions and the answers, which took about five minutes, you will find that if I study this transcript I will probably get one answer that means yes and the other two that mean no.

Just read back the question and the answer, [1399]

the last question, and see what I am trying to eliminate here, Gentlemen.

(The portion of the record referred to was read by the reporter as above recorded.)

THE COURT: See, after the answer, "No," that is the end of the question.

Let's proceed. I do not want a dissertation on what it does show. He is asking what it does not show.

THE WITNESS: I'm sorry, your Honor.

THE COURT: I am not being critical, but it has been a trend here, and I am going to put a stop to it.

Go ahead.

The answer is "No."

MR. CLARK: Yes, sir.

THE COURT: Go ahead.

BY MR. CLARK:

Q Do you have any idea, any notion, of how important the population per bank office ratio is to bankers contemplating entry?

A As to the exact weight relative to other things, no.

Q There are lots of other factors, aren't there, [1400] which bankers consider when they contemplate entry into a new area?

A Yes.

Q That includes personal income, it includes economic growth of all times, doesn't it?

A Yes.

Q Why did you select population per bank offices as a factor which you discussed relating to this?

A It is a simple measure that reflects some of these other factors.

Second, it plays some role in bank decisions.

Third, it plays some role in regulatory decisions.

Q How did you become aware that it plays a role in bank office decisions?

A Well, if you—it is a factor along with income—or it's correlated with income and some of the other things. If the town is very big, it obviously does have a lot of income there.

Q How did you become aware of that fact? Did you talk to bankers?

A Yes. I read the bank—the literature on banking. I mean there is a general literature of—here, but it seemed to me, as an economist, a relevant factor.

Q It did not seem to be too relevant to Connecticut [1401] National Bank, did it, when they paid a million two to go into Stamford, which I see has the lowest ratio on the chart? That did not seem to deter Connecticut National Bank, did it?

MR. REYCRAFT: Your Honor, I object. He is asking the witness to speculate about what somebody in Connecticut National Bank was thinking. The facts are there, and, whatever they show, he can argue about it and we can argue about it later on.

THE COURT: Sustained.

You must recognize that the opinion from an expert is extremely important, but certain self-evident facts I can absorb, believe it or not.

When banks expand, I suppose there is just no one factor they consider. Maybe the ratio is the lowest on the list but the executive officers had fourteen other factors that made them make this move to Stamford, or maybe they had some intuition that the ratio is going to shoot up rapidly, because a new shopping center is coming in or a new housing project or the government is to put in an air field. So, you see, we can go on for days.

I will sustain the objection, because obviously you are asking him to answer a question [1402] that is objectionable for the reasons I stated. But, also, he is not the CNB; Mr. Hawley was on the stand and you should have asked him then.

So I will sustain the objection.

(Recess)

THE COURT: You may proceed, Mr. Clark.

MR. CLARK: Thank you, your Honor.

BY MR. CLARK:

Q Dr. Peck, you testified yesterday that the elimina-

tion of one of two significant potential entrants into a market where there was concentration of 80 percent in the top three firms would be anticompetitive?

A Yes. My recollection is I said that they were the only two others. There was a qualification. But I did testify—

Q I want to extend that now to three.

What would your answer be?

A At some point the—the effect begins to be diffused, and each time you extend the number you get to a larger number. I think three is beginning to reach the point of diminishing returns, but precisely where that point is is a—is not scientifically determinable.

Q You determined, at least in the market that you examined, that where there were as many as four or five [1403] remaining, that was too many?

A That's right.

Q So now we have, I suppose, on the one hand, four or five, and two.

Are those the parameters, the boundaries, that we are talking about now?

A Well, the most common proposition in the literature is where you have one major potential entrant. That's the first, number one. And second is there—a gap between him and the others, that is considered the—the potential competition you have—the merger would have its biggest effect. When you go beyond that you get into situations where the evidence is less clear. It seems to me that you have to consider—begin to consider some other factors.

Q So perhaps the most important factor, then, is the significance of the potential entrant and its relationship to other potential entrants; am I correct?

A That is a factor, yes, sir.

Q Is it the most important or not?

I mean you said that the literatures seems to say that that is more important.

A I think that that's right. I can't think of other factors offhand that would dominate it.

Q But, assuming that there is not any substantial [1404] difference between, say, the first two or three,

then you would go to and look at the number of potential entrants that do exist; right?

A They're all of roughly the same size, I assume, in your question. You would look at the numbers, I think—

Q And you would want to at least be assured that there may be two or three available; am I correct?

A Well, the—the point—the place where I've seen the point discussed most is in an article by Donald Turner, which I agree with, where he says one is clearly a—has a potential for lessening significant competition. As you go beyond that you have to begin to consider some of the procompetitive effects of the merger, and he talks about one, two and three, saying each time that as you add numbers the effect gets less. He doesn't go beyond three.

Q If a merger would lead to other mergers between potential entrants and thereby further reducing the number of potential entrants, that would be an anticompetitive effect, wouldn't it?

MR. REYCRAFT: I object. We do not know which mergers and I do not see how the witness can answer that kind of a question.

THE COURT: If he cannot answer, he should say so.

[1405] A I would have to know what other mergers you are talking about.

Q Let's assume that you have five potential entrants and that this merger is going to eliminate one of them and would lead to a merger between two others.

That is an anticompetitive effect, isn't it, two others out of the five?

A Well, then, it seems to me when you look at other mergers it's necessary to consider other aspects. For instance, think of all the top ten banks and take different pairs. You have to consider would some of the other mergers raise questions of direct competition and so on. But, if your question is if this merger leads to other mergers, which—I guess you would have to say—were somewhat analogous, it would be a tendency of an anticompetitive effect it seems to me that that follows.

But there's a lot of other qualifications that must be introduced.

Q That is a factor that you did not take into consideration in your analysis?

A Well, I did look at the possibility of other mergers. If you—but not in the detail I looked at this merger. If you—the—some of the other mergers that you might have in mind among the top ten have a substantial [1406] effect on direct competition.

Q Just as this one does, I take it?

A Well, there's the four-town area, but they affect it in a larger number of towns than the four-town area. If you perhaps could give me an example, it would be a little easier than speculating about all the possible ten.

But I do want to say that I have not studied other mergers in the same detail I have studied this one.

Q And you did not consider these other mergers when you gave your conclusions about the effect of this merger on potential competition?

THE COURT: What mergers are we talking about, mergers that have occurred or mergers that may occur if this one is permitted?

Then, if you are talking about triggering other mergers, we have the problem of what mergers you are talking about. Are you talking about the Second National Bank of New Haven merging with the Woodbridge Bank, or are you talking about the Hartford National merging with CB&T?

Then you have the Comptroller that is involved, you have the Department of Justice that is involved, you have other regulatory agencies that are involved.

[1407] Listen, you also have the business judgment. Maybe CB&T does not want a merger with Hartford National even if the government would permit it.

MR. CLARK: Your Honor, I fully agree that one cannot predict which mergers would take place. I am certainly not asking the witness to do so. But I simply want him to consider this additional factor, because it is clearly a relevant factor in a case of this kind and the courts have considered it in other cases. It

is a contention that the government is making, and without—

THE COURT: I know that. I know that. But, if you review his answers, we are not getting anywhere on it.

Did you consider that factor in the opinions you expressed?

THE WITNESS: Your Honor, I considered that in sense that I made a limited study of the other possibilities. For example, the state—all the possible pairs of the other—of the ten larger banks—I have a table that I did some consideration of that factor. It is not as complete a study as I did for this one.

I don't know whether you want the answer—

[1408] THE COURT: You did take it into account?

THE WITNESS: Take it into account, that's right.

THE COURT: Go ahead.

THE WITNESS: Would you read the question, sir.

MR. CLARK: That was my question. Okay.

BY MR. CLARK:

Q Then my next question is: Did you then further reduce the number of potential entrants into any market as a result of any mergers which you may have considered?

A It turns out that in my view there's one possible pair among the top ten, recognizing that I have not made a detailed study, that would be analogous to this merger. The problem is among the first three banks. You are talking about very large banks, so I did not examine all possible pairs of the first three.

Between the State National and the City National there's a substantial elimination of direct competition in eight towns, so I disregarded that possible pair.

Between State National and Colonial Trust there's five towns with elimination of direct competition. They tend to be, as I recall it, larger relative to the total banks than this merger.

Now—and between the City National and Colonial [1409] Bank & Trust there are four towns, but I think they're larger relative to their market than the other, so

the defendant banks there would not be willing to divest.

It turns out that the one kind of candidate would be the Second National and some other bank among the first ten, if you further exclude the First Connecticut Bank Corporation, because it's already in Hartford. So that you are down to—I mean on this rough analysis you are down to one additional merger, and you can see the effect of the charts among the top ten. It would just reduce the number by one.

That is, I did consider it, and that's the kind of consideration I gave.

Q You made a conclusion that certainly mergers were more possible because of elimination of existing competition than others, didn't you? And so you excluded all mergers where there was overlap in four or five towns?

A That's—that's roughly right.

Q But you did not consider the fact that there could be divestitures along the lines proposed here which would correct or would possibly correct this overlap?

A I considered that, but these towns are larger relative to the total size of the bank, that I think it would be less likely that it would be proposed.

[1410] Q I want to return to this rather, perhaps, distasteful subject of concentration, Dr. Peck.

What does the literature tell us about what is a highly concentrated market? What are the guidelines that we use?

A Well, the literature is most extensive on manufacturing industries, because when you get to regional markets it becomes a much more complicated subject. I think that the literature says four firm concentration ratios of more than 70 or 80 percent in national markets has some impact on profit levels.

Q Baine was the pioneer in this area, was he not?

A I think so. Other people have worked in it.

Q What level did he use?

A I can't recall. The—I can't recall.

Q He used eight firms holding 70 percent? He found a relationship between concentration and performance in

firms with concentration above 70 percent in the top eight firms?

A I can't recall the specific finding, but I—it's—later writers I think have used four firms in the top 70. That is in, for example, the—what is called the Neill report, which was an antitrust task committee set up by President Johnson.

Q Isn't that the top four with 60?

[1411] A You are probably right. I thought I recalled it as 70.

Q Reading—

A I'll accept your word, Mr. Clark. I thought it was 70, but it could well be 60, and I think it might well expedite things if you—

THE COURT: Was this a national market or all markets?

THE WITNESS: My recollection—Mr. Clark has obviously reviewed it more recently than I have—it's national manufacturing industries, national markets.

THE COURT: Would that be, in your opinion, applicable to banking?

THE WITNESS: This is a regional industry. I don't think it is directly applicable—not applicable.

THE COURT: What I am saying is, from your interpretation of the literature, it means all markets, be it national, regional, SMSA's, towns?

THE WITNESS: No, your Honor. Your Honor, the literature he's referring to is about manufacturing industries on a national basis; for instance, the automobile industry. The top four [1412] firms have more than 70 percent—more than 60 percent of the market.

I've never seen as extensive a study on regional markets in general. There's some on banking.

THE COURT: Go ahead.

BY MR. CLARK:

Q There are studies, are there not, which do correlate concentration and performance in banking?

A Yes, there are.

Q Of course, banking is, almost by definition, a re-

gional market, since banks cannot branch outside of the state in which they are located?

A Yes.

Q Did you test the level of statewide concentration in Connecticut against any guidelines, concentration guidelines, that you are familiar with?

A No.

Q Do you know what the concentration level among the four largest is?

A Not exactly.

Q It is about 55 percent, Dr. Peck.

Would that concern you in terms of whether it is high or not?

[1413] A Well, you would have to know something more about the impact of the New York banks, a lot of other factors. The 60 percent figure that you mentioned is a lot simpler, because it's national manufacturing industries. You don't have these problems.

[1414] Q I want you to assume that we have correctly computed the concentration ratios as about 55%, so that is approaching the level, isn't it, at which studies have found a significant relationship between concentration and performance?

A Those studies are for national manufacturing. It is—I'm not—the number 60% surprises me, because I had 70 and 80% in my mind, but I don't think it is—the difference here gets a little tricky. I don't know of studies that pick on 55% as the—is the—as the number.

Q There are some studies which use 50%, aren't there? Turner used 50%, didn't he, four-firm, '50%?

A If you are referring to Turner and Kazen, is that the—

Q I believe so.

A —that's the book? Well, I worked on a book, and I think my—my recollection of that book, which was published in '56, it does not do empirical studies of what concentration ratio matters. It tries to sum up from the general literature and say that—propose a new statute that would make a concentration ratio of 50% a—presumptively illegal, per se, let me say I haven't read

that book recently, and perhaps it's getting—I'm getting—

Q All right. Well, I don't want to waste time, either. Obviously, then, you did not consider the effect of this [1415] consolidation on statewide concentration in Connecticut, did you?

A No.

Q You testified yesterday that you don't consider holding companies to be a viable means of expansion into closed towns in this State?

A No. I think I testified it was a more expensive form of entry that had never occurred.

Q Based upon your observation of Mr. Hawley's testimony?

A That's right, the more expensive—I think as the record shows was based on.

Q And the other fact, you said, it is less likely because it hasn't happened yet, is that right?

A That's right. Economists have a presumption that if something hasn't occurred, but it is known, there must be some reason it didn't occur.

Q You are aware that there are multibank holding companies in Connecticut?

A That is right, but I don't know of any circumstance that's been used to accomplish the kind of entry which you have described.

Q That's correct, you are absolutely right. Do you know whether these multibank holding companies were formed? How old [1416] they are?

A I don't know exactly, I—

Q Well, it is recently, Doctor Peck, one was formed in 1969 and there's been another one formed just this year. Before 1969 there were no multibank holding companies in this State.

MR. REYCRAFT: Mr. Clark, I think you are misleading the witness, I think there's only one in the State now. Do you know of two? If you do, let's have them.

MR. CLARK: Well, perhaps it hasn't been finalized. Connecticut National Bank is in the process of acquiring a bank in Westport which will be operated through a holding company.

MR. ROOSEVELT: Connecticut National.

MR. CLARK: Connecticut Bank and Trust, is that right?

MR. REYCRAFT: I don't know if they are or not.

MR. CLARK: Mr. Hawley testified to that in his deposition.

Q So there's one which was formed and one in the process of being formed.

Did you think to inquire as to how recently these multibank holding companies had come about?

A No.

[1417] Q And so the recent data doesn't matter to you, the fact that they're just now getting started?

A Well, no, it doesn't. The event I was talking about is the use of a holding company to enter a closed town.

Q If you testified in 1968 as to the likelihood of multibank holding companies, then I take it you would have said, "I don't think it is very likely because there aren't any yet," am I correct?

A Using—I think that logically follows from the inference, yes, sir.

Q And, of course, you would have been wrong, wouldn't you?

A Yes, I would have. I have been wrong before.

Q You are aware that holding companies are used in other states to enter de novo into new markets?

A That's right.

Q Did you think to investigate how recently this practice has become commonplace in other states ?

A I don't know the exact date, but in unit bank states, I think it goes back some time.

Q Did you attempt to determine if there are any differences between those states and Connecticut which would make holding companies possible there but not here?

A No, I did not.

[1418]Q You don't know if conditions are any different in New Jersey or Maine, for example, than they are in Connecticut?

A No, I do not know the—

Q Doctor Peck, to go back to our three-firm con-

centration of 80% in a market, assuming we have correctly defined it, it is—without belaboring the point—it is high, isn't it?

A Yes. In banking markets generally, concentration ratios are high.

Q But you, as an industrial economist, would want to deconcentrate that market, wouldn't you, every else being equal ?

A Well, that—in talking about deconcentration, most of the literature and most of the thinking has been on national markets. To deconcentrate every banking market in which the three largest banks hold 80% of deposits, I think, would mean revolutionizing the banking industry, because, as I recall, looking at concentration ratios in banks there are very few towns in which that isn't close to being so.

Q Danbury is one of them, isn't it? I think you testified yesterday that that was a possibility?

A There's more entry would be possible. Yes, that follows from the table.

Q Well, assuming that it is, entry is possible, how many new entrants would it take to deconcentrate this 80% market [1419] to a level which you would consider acceptable?

A I think that—I'm not so sure you wish to move on concentration at the 80% in banking markets. My recollection is that almost all major cities are at that level, and I think that—my point is that concentration in regional markets means a different thing than in national markets. Because in national markets you don't need to worry to the same extent about overlaps. So that I—I think that you can't draw what you say—what is said about national markets in manufacturing to banking markets that are regional.

Q Well, you don't dispute, do you, the advocacy of the literature in banking which does relate concentration of this level to adverse performance?

MR. REYCRAFT: Which literature? I think if you are going to dispute something, you ought to point out to him—

THE COURT: Which market? Are there three firms that control 80% of the market in Connecticut?

MR. CLARK: Yes, sir. In the market, as we have defined them, it is true in both New Haven and Bridgeport.

MR. REYCRAFT: We deny that, of course.

Q Well, Doctor Peck, I'm asking you simply to accept the fact that—of—concentration is related to performance [1420] in banking?

A Uh-huh.

Q And then I asume that as an industrial organization economist, you would prefer to have concentration of 80% reduced, wouldn't you?

MR. REYCRAFT: I object. He's asking him to assume the answer and ask him does he agree with his assumption as to what the answer is.

THE COURT: Well, I'll allow it if the government thinks it would be able to prove that.

Do you agree or disagree?

We're talking about banking, we're talking about a market, three firms have 80%. Do you agree that if there were a way to decompress that market, deconcentrate it, that that's good sound economics, that's the question that's pending?

THE WITNESS: I do not agree.

THE COURT: Very well. Proceed.

Q Why not?

A I think that the amount of reorganization of a banking industry involved imposes very substantial transitional cost, you recall that in the Neill report they asked how many industries be effected, and it was a relatively small number. Here you are talking about the most of—a very large number of banking [1421] markets—have—have a high degree of concentration, that's one reason. Second reason is that regional markets are not the same as national markets. Because, for example, when you are measuring competition in the automobile industry, it is true you have to worry about the competition of Volkswagen. On the other than, that seems to me less of a factor than worrying about the competition from Hartford banks in New Haven.

Q So you say, then, that concentration in banking, as far as you are concerned, is less important and that the courts should not be concerned with it simply because all or most banking markets are concentrated, is that your testimony?

A I don't want to say what the court should be concerned with. My testimony is that this would lead to a major reorganization of the banking industry. The question, then, is: is that an appropriate vehicle for antitrust laws. I think that's getting beyond the point. The—where I feel comfortable about testifying as an expert.

Q Is not in the banking field, I take it?

A I think that—I think that the standard literature on concentration has a different meaning in the banking area, and that is the point of my—why I feel uncomfortable about trying the industrial organization literature.

MR. CLARK: Thank you, your Honor, I have nothing further.

[1422] THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. REYCRAFT:

Q Doctor Peck, do you know of any industries referred to in the concentration literature that Mr. Clark was discussing, Baine, Michael Mann or the rest of them, that deal with 13 or 14,000 business enterprises?

A No.

Q Which is what the banking industry consists of?

A No.

Q And do you know of any of the industries which—which either Baine or Michael Mann discuss in their literature which are subject to the same kind of external competitive influences as banks in Connecticut are?

A No.

Q Mr. Clark asked you about three firms controlling, I believe he said, 80% of the market. In your view, is it relevant to consider the economic strength of the firms

in whatever market it is, in addition to the amount of business that they have at the particular moment?

A Yes.

Q For example, in New Haven do you think that the fact that Connecticut Bank and Trust Company and Hartford National Bank and Union Trust Company are all bigger by far than First [1423] New Haven Bank, First New Haven National Bank, has any relevance to the market shares which he gave you as an indicator of absence of competition?

A Yes, I do think that's relevant.

Q And how would that impact?

A Well, the fact that in addition to the market share they have in New Haven, they have substantial resources they could call upon greater than the other banks that were headquartered there, has relevance, these greater resources would have an impact on their behaviors as competitors—could have an impact on their behavior as competitors.

Q Do you know of any firms which are discussed in the Baine book which are subject to the kinds of competitive pressures New Haven—Connecticut banks are from firms as large as New York State Banks?

A Relative to their size, you mean?

Q Yes, sir.

A The size disparity?

Q Yes, sir.

A Well, certainly among the concentrated industries that Baine discusses, like typewriters, for example, where there—at that time, there were two large firms and two small, there's no comparable one, I can't think of all the cases of the 20 industries, you might find that's analogous, I just [1424] can't recall every industry.

Q But you can affirmatively think of one in which there's any comparable outside influence?

A No, I cannot.

Q In considering the size and competitive strength of banks in Bridgeport, would you think it is relevant in assessing that that State National has—is a subsidiary of S&H Green Stamps?

A Yes, I think it is relevant. The degree—I'd have

to know a lot more facts. But there is a notion sometimes called the deep pocket theory where the parent corporation has substantial assets and that has an impact on competition.

My general impression is that S&H Green Stamps has what economists called a deep pocket.

Q To the extent that you used size of banks as an indicator of their possibility of being an entrant, wouldn't the total resources of the business enterprise be more significant than only those in—devoted to banking at the moment?

A More significant might overstate the situation. Perhaps as significant depending upon the relative ration, but the other resources are important, apart from what they have in banking.

Q If, in fact, a market is a—is a market for a geographic area—I should say: is a market for purposes of [1425] any of these concentration studies, doesn't the literature show that they are characterized by abnormal profits? Baine's contention?

A Yes, it is.

Q So that if a claimed market, if the firms in a claimed market with high shares don't show abnormal profits, there are a number of places to look for an explanation, aren't there?

A That's right.

Q And is one of the possible explanations that the alleged market is not a market?

A That is a possible explanation.

Q And wouldn't you think that in a number of these claimed markets that it ought to be possible to show that the banks in a SMSA in Connecticut, for example, one of the SMSA's in Connecticut, which are contended to be highly concentrated, that some of those banks ought to show abnormal profits in relation to their competitors?

A Yes. The industrial—the manufacturing literature shows high concentration is accompanied by higher than average profit rates.

Q And if these banks don't make higher than average profits, what are the possible explanations?

A Well, one explanation that would occur to econ-

omists is [1426] that we're not measuring a market, there could be other explanations that, despite the concentration ratios, the direct competition is very substantial, that's the second one.

Q You were asked questions also about the Neill report, and you are familiar with that generally, are you not?

A Yes, sir.

Q And that is a report by a task force appointed by the President to study antitrust policies, right?

A That is right.

Q Do you know whether that report was based on the assumption that new legislation was needed to deal with what were thought to be conglomerate merger problems?

A Yes, it is based on an assumption—I think the appendix contains a text of the proposed legislation.

Q And did that report assume that the existing antitrust laws were not adequate to deal with some of these problems?

A Yes, it did.

Q And that a number of mergers that were taking place were considered by that group not to violate the antitrust laws?

A That is right.

Q And didn't that report deal generally with conglomerate mergers?

A In large part. I think, in fact, the origins of it [1427] in the White House staff was the rising trend of conglomerate as opposed to other types of mergers.

Q And aren't market extension mergers considered to be conglomerate mergers? Is that a Turner article in the Turner book?

A Yes, he does consider that, some other people consider conglomerate mergers to be more when an automobile company acquires a hotel chain.

Q Right. But Donald Turner, who was former Assistant Attorney General in charge of the Antitrust Division, has characterized market extension mergers as conglomerate mergers, has he not?

MR. CLARK: Your Honor, these questions are terribly leading.

THE COURT: Yes, I recognize they are, but I think we're in a field where I'm going to allow leading questions, because they really don't go to the heart of the issues before me, and secondly, I doubt if he can lead the expert down a road that he doesn't want to go down. Go ahead.

THE WITNESS: Would you repeat the question?

(Question read.)

A Yes, my recollection is that he did so in his sixty—1965 article. The classic in the field.

[1428] Q You were asked questions, also, about de novo branching as being the most procompetitive form of entry. Would you regard the chartering of new banks by private investors to be equally procompetitive?

A Yes, in the sense that it adds an additional competitor. So that it has the same effect in the immediate market, it still leaves a bank waiting in the wings, so it's even slightly more procompetitive, assuming the banks are the same size.

Q And do you know how many new banks have been chartered in the State of Connecticut in the last ten years or so?

A The number is significant, but I can't recall the exact number, but it is a significant number.

Q In excess of 20, does that refresh your recollection?

A My recollection was it's 28, but I may be—it is in excess of 28. In excess of 20, I'm sorry.

Q Doctor Peck, you are not familiar, are you, with any case in which a bank holding company can enter Connecticut—has acquired any newly chartered bank by acquisition?

A I'm not familiar with such a case.

Q Do you know when the Federal Bank Holding Company Act was passed?

A I think that was in 1970—no, no, '66.

Q '56?

[1429] A '56, I apologize. Obviously, I do not know.

Q And, obviously, it's been possible for bank holding companies to be formed, at least since that time, hasn't it?
A That's right.
MR. REYCRAFT: I have no other questions.
THE COURT: Mr. Bell?
MR. BELL: No.
THE COURT: Mr. McEnerney?
MR. McENERNEY: No, sir.
THE COURT: Anyone else?
MR. CLARK: No, your Honor.
THE COURT: You are excused, sir.

(Witness excused.)

THE COURT: Maybe this is an appropriate time to break for lunch, probably somewhere around 2:05 or 2:10, but I'd like to see Mr. Bell on another matter very briefly. It has nothing to do with this case, gentlemen, it is with respect to the case we have Friday.

(Recess taken for luncheon at 12:50 p.m.)

[1430] AFTERNOON SESSION

THE COURT: Are the parties ready to proceed?
MR. REYCRAFT: Frank Chadwick.
FRANK G. CHADWICK, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:
THE CLERK: What's your full name, Mr. Chadwick?
THE WITNESS: Frank G. Chadwick, Junior.
THE CLERK: And where is your home town?
THE WITNESS: Branford, Connecticut.

DIRECT EXAMINATION

BY MR. REYCRAFT:

Q Mr. Chadwick, what is your present position?
A I'm President of the First New Haven National Bank.
Q Are you chief executive officer of that bank?

A Yes, sir.
Q How long have you held that position?
A Since February, 1968.
Q And prior to that, what position did you hold?
A I was senior vice-president.
Q Of the First New Haven National Bank?
A Yes, sir. Yes, sir.
Q And for how many years altogether have you been with the First New Haven National Bank?
[1431] A 22.
Q And what business experience did you have prior to that time?
A I was with the—what was then the Granite Trust Company, Quincy, Massachusetts for ten years before coming to New Haven.
Q And did you have any business experience prior to that time?
A Yes, prior to that, I was with the—what was then the Universal Credit Company, in Boston, which is now part of the Commercial—CIT.
Q Mr. Chadwick, can you describe for us generally what you consider to be the market area of the First New Haven National Bank?
A Well, our present market is where our branches are, where—where I think our market should be and can be made something different than this as time goes on.
Q But at the present time, can you give us a general geographic description of where those branches are?
A Well, historically, our board and our—management, has felt that our market area was located between—my definition—between the two rivers, the Housatonic River and the Connecticut River. We have not quite filled that area in the time that we have been branching, but in general, that's the area in which we operate, north to Wallingford.
[1432] Q How many new branches has the First New Haven National Bank opened in the past ten years.
A I think the information you have there, but on average, I believe we have opened about one and a half a year.

Q Have these branches been located in the City of New Haven, or are they located in towns outside the City of New Haven?

A Both. Both.

Q And can you give me any number as to how many in each?

A I think the count in New Haven is seven with the main office, and that would leave 15 branches outside of New Haven proper.

Q And of those outside of New Haven proper, how many were de novo branches?

A Twelve.

[1433] BY MR. REYCRAFT:

Q Mr. Chadwick, have you ever given any consideration to opening or applying for de novo branches in Fairfield County?

A No.

Q Why not?

A Well, several reasons. One is we've been pretty busy where we have been. Two, the reasons for going into Fairfield County were not as—as impressive as they have been going out to other places.

I think one has to say that when you are running a business the size of mine and the kind of business you are in, you think about it, but, if I understand your term, if we've given serious consideration, the answer's no.

Q To the extent that you are presently giving any consideration to de novo branches, in what areas are you thinking, in general terms?

A Well, most recently, in the last three or four years or five years, we've been concentrating our research on the area east of us and north of us.

Q Have you ever heard of the concept called standard metropolitan statistical area?

A This has been a real problem to me, because I was reminded since I have been sitting in this court—I took [1434] the position that before I came to this case I had never heard of it. My research man tells me that he's used it a couple of times in some of the papers that I've seen. It doesn't mean much to me and never has.

Q You say your research man has mentioned it to you in a couple of papers.

Based on what you now understand about the concept, does it mean anything to you in terms of a banking market?

A It means less, I think, than it did before.

Q Can you tell me why that is?

A Well, I think—I think Dr. Peck, who preceded me here, used—picked words out that satisfied me very much, that I think the appropriate market, as far as I'm concerned, in picking out places to put branches—I like the concept of the towns or the area or the—the kind of a place that's going to provide depositors for us. SMSA's don't do a thing for this—to me, for this.

Q Have you ever given any consideration to forming ing a holding company and applying for a newly chartered bank in any part of the state?

A No.

Q You have heard references, have you not, to such a concept during the course of this trial?

A Yes, sir.

[1435] Q What is your opinion of the likelihood or reasonable probability that First New Haven Bank alone would ever do this?

A Under my present knowledge or understanding or vision, I would say very remote, very remote.

Q What are the obstacles that you see to this form of activity?

A I think previous testimony has certainly been correct that it's more expensive. Secondly, in my opinion it doesn't do much, if—if you decided not to go into a specific area for other reasons, this doesn't excite one very much; there are other ways to do it.

Q Are you familiar with any newly chartered banks which have begun business in what you consider to be your market area over the past several years?

A Yes, there are a number. Want me to try to name them for you?

Q Yes, sir.

A North Branford is the Community Bank; North

Haven, National Bank; the Hamden National Bank; the Woodbridge Bank & Trust Company.

I think that's it.

Q These, as I understand your testimony, are newly chartered banks?

[1436] A Yes, sir.

Q In what you have described as your area.

Do you know how they are doing?

A Yes, in a general way. They're doing—they're doing fairly well. My guess is they have put together between them something on the order of perhaps 25 or 30 million dollars of deposits, and possibly a little more.

Q Mr. Chadwick, you are familiar, are you not, with the fact that Connecticut Bank & Trust Company and Hartford National Bank have made acquisitions of banks in New Haven?

A I guess I'm the one person that is familiar with that situation.

Q Can you tell me what, in your view, is the competitive impact of those acquisitions on your bank?

A Well, may I offer a little broader answer than just to say yes, it's an impact.

First let me say that the—I think the biggest problem that a bank like mine has or its biggest competitive need is deposits. I've heard in this case a lot of discussion about the ability to compete for loans, but basically we're talking about the ability to compete for deposits. And when something begins to happen in a territory with the kind of strength and muscle and influence of people, capital strength, that two new entries [1437] of this size have, then obviously you have got a problem with competing for deposits.

None of us have ever had much of a problem competing for loans. I've always said that you can make all the loans that you can make that—that you have dollars to make for.

So that this is hitting us in the soft spot of competing for deposits.

Now, carrying it one step further, suppose we do—are able to maintain our level of deposits without any growth. Then they move into this rate situation.

And, if you will recall, we've discussed many different kinds of loans, and somewhere along the line we were talking about the systemwide rate-setting practice, whether or not banks set their rates consistent throughout their whole system.

And, of course, on the surface, for the Hartford banks and for us, Mr. Hawley, others, I'm sure that it would appear that we do have systemwide rate setting. In my bank our senior lending officer, for instance, issues a sheet every time he wants to change the prices generally on loans, to a hundred, a hundred and fifty loans officers in the branch system, and he says, "Gentlemen, these are the minimum rates that we are going to be working on these banks [1438] for the foreseeable future until you get another notice from me." The next day, however, if I happen to have the loan officers in a room and we're talking about price setting, I remind them that each of them have the right to change that, to alter that, in a given situation, if in their judgment the rate is wrong and they need, from a competitive standpoint, to change the rate forward to get an attractive piece of business.

I assume that the other banks are doing the same thing. I know that the Hartford banks are doing the same thing. They're doing it specifically in the area of what we call our time sales business.

In our installment loan department we have about 55—50 percent of—let me tell you first we have $60,000,000 in what we call installment loans. About half of this is roughly what we call time sales business.

Now, the time sales business is where we buy contracts, consumer contracts, from dealers, primarily automobile dealers. That rate-setting process is done at the dealer's desk and has no bearing whatsoever to bankwide policy rates. Those rates are set, those arrangements are made, with a given automobile dealer or a given appliance dealer, depending upon our judgment of how tough our competition is, what his prices have been.

[1439] And therefore all of this speaks to say that we are in a very competitive situation in lots of dollars.

Q You are referring now primarily to competition from the Hartford banks, are you?

A Yes, sir; yes, sir.

Q Mr. Chadwick, D-60, which is the Special Masters' report, indicates the amount of banking business which the Hartford banks hold in their New Haven offices, and I know you are familiar with that in a general way.

Can you tell me whether you think that those numbers are a fair indicator of the competitive strength of those two banks in New Haven?

A I'm sure they're not.

Q Why not?

A Well, because there are a number—I would suspect—or I think there's a stronger word—I'm sure that their large corporate relationships with corporate customers, even though they're in the branch area, do not appear in the branch figures.

MR. BENTKOVER: I will object to this unless there is a foundation for establishing this witness' knowledge of the accounting systems of the Hartford banks; otherwise, it is pure speculation on how the Hartford banks account for [1440] such business.

MR. REYCRAFT: I will show—

THE WITNESS: May I be specific?

THE COURT: All right.

THE WITNESS: May I be specific?

THE COURT: Go ahead.

A (Continuing) We know, for instance, that all of the towns that we do businesses—do business with in our area have balances in Hartford.

Q Are you talking about the town treasurers?

A Yes, and they do not show in the branch books.

Q Mr. Chadwick, let me show you also—

A Those are substantial, too.

Q On D-60 is a list of 65 corporations in New Haven County and Fairfield.

You recognize that list?

A Yes, sir.

Q Do you recall the purpose for which it was submitted?

A Yes. We were asked to make a list of those customers with whom we have been doing business for some time who are also forced—who have been forced by their size of their growth patterns to do business elsewhere.

Q Let me show you page 27 of the Special Masters' [1441] report and refer you to the third full paragraph. What does that indicate with respect to the doing business of Hartford banks in the New Haven and Fairfield County areas?

A May I read it?

Q Yes, sir.

A "Of the 25 corporations listed above, 17 are customers of the Hartford area banks. As of the first week in October 1972 these customers had demand deposits in the Hartford area banks totaling $4,013,962. These companies had commercial and industrial loans with aggregate principal balances of $6,000,000, approximately."

Q Mr. Chadwick, do the New Haven offices of the two Hartford banks have the capacity to make loans to the full lending limit of those banks?

A Sure.

Q Can you tell me what the lending limits of CBT and Hartford National are and which are available in New Haven?

A There's something over $8,000,000 for each bank.

Q Is that the legal lending limit?

A Yes.

Q What is the legal lending limit of First New Haven National Bank at the present time?

A Approximately two million three.

[1442] Q So that those are two banks which have substantially larger lending limits than your own?

A Depend upon the definition. Their lending limits are probably three times—each of them about three times higher than ours. I think when we get into lending limits we have to define what we're talking about, because there are different definitions.

Q We are talking about the maximum legal lending limit.

A Legal lending limit as defined by the Comptroller

includes your capital, it includes your undivided profit, it includes your surplus and your valuation of reserves; and that total in my bank is something on the order of 24 or 25 million dollars.

Q Excuse me, sir—

A 24 or 25 million.

Q The total of your bank?

A Those items in my bank.

Q But your lending limit is 10 percent of that?

A 10 percent of that.

Q Your lending limit is therefore between two million four hundred and two million five hundred thousand?

A Yes, sir.

Q You are familiar with the Union Trust Company, are [1443] you not?

A Yes, sir.

Q Does that bank have offices in New Haven?

A Yes, sir.

Q Can you tell me what the approximate legal lending limit of the Union Trust Company is?

A It's probably today around five, five and a half million.

Q So that you rank a low fourth in terms of lending limit in New Haven; is that right?

A Yes, sir; yes sir.

Q Do you have any knowledge as to whether banks which do not have offices in New Haven, such as Boston and New York banks, make loans to businesses in the New Haven area?

A Yes.

Q Can you tell me what your knowledge is on that subject?

A Well, some of the names on that list, Mr. Reycraft, maintain balances and borrowing relationships with Boston and New York banks. Some of them—a couple of them even Chicago banks.

Q So, without going into the amounts of the lending limits of the New York banks specifically, obviously they are all very substantially in excess of what First New Haven [1444] has?

A Yes, sir.

Q And the same thing is true at least of First National Bank of Boston, is it not?

A Yes.

Q There has been testimony in this case—

A Excuse me—

Q Excuse me, sir.

A Before we get away from there, may I carry it one step further, which would be natural for me to think of.

When we think of terms of those customers of ours who have been required to do this, my mind goes quickly to the deposits again, because the more business we can do with these customers who are friends of ours and have been for long standing, the more anxious they are going to be to keep larger balances with us and therefore the better job we can do in our area to use those deposits. So they go together.

Q In other words, you think that larger borrowers may keep on deposit with you deposits which they are not using, which you can lend to other customers?

A No question, no question.

Q Has this been your experience?

A Yes, sir.

[1445] Q Mr. Chadwick, there has been testimony in this case that there is high concentration ratio in New Haven, in the New Haven SMSA, and there have been suggestions that such a high concentration ratio in general enables a firm to make abnormal profits and raise its prices and it is insulated from competition.

Could you comment on that from your standpoint in New Haven?

A Well, I'm not sure of the legal implication of this as it has to do with the case.

Q You just discuss it from the standpoint—

A But my own reaction to that question is that, from a concentration point, from a standpoint of our penetration of the banking business, it is true—and it is in the record—that my bank has had something on the order of 50 percent of the banking business in our market area for years.

This is beginning to erode. We know for sure that things have changed in such rapid succession that we're not going to be able to hold that kind of penetration or whatever—whatever word you want to put to it.

But, from the standpoint of concentration, whatever concentration we had as the leading bank in our community, it's eroding, and we think it will erode further if we're not allowed to do something about it.

[1446] Q Do you have the ability to price your banking services without regard to competition from outside New Haven?

A No, no.

Q What are the factors that bear upon your pricing decisions at the First New Haven National Bank?

A Well, we start with the—with our best customers, those who are borrowing in the money market centers who we wish to retain, and therefore we have to meet those prices, then graduate it on a scale downward on some kind of a judgmental equation which only a loan officer can understand, because he's dealing with an individual customer, the rates that he's charged scaled downward—I'm sorry—scaled upward, from the best—

Q You are familiar with the concept of prime rate, are you not?

A Yes, sir.

Q Can you tell us what prime rate is?

A First of all, I have to tell you that for years I've been fighting against the use of the word in speeches and lectures, and I think it's been one of the most misused words in our industry, and I think it continues to be.

I'm sure you have recognized that in the banking business recently there's been some effort to get away from the use of this word; whether it's a word that connotes a [1447] restraint of trade I'm not sure, but I don't think it's a fair word.

I don't think that any two borrowers that I know are entitled to the same rate for the same reasons. Therefore, in my bank my—whatever influence I have on our people is to try to disregard that word unless we're in, as I say, specific competition with New York or Boston

banks with specific customers, where we have to use the same rate they've used in order to keep the business.

Q There are many—

A Let me continue.

Q Yes, sir.

A Common concept of the prime rate, people who are writing papers, the newspapers, the man on the street, is that this is the lowest rate of any given moment that's available in the American banking system.

Q These speculations do appear in the newspapers?

A Sure.

Q In Connecticut as well as elsewhere?

A Sure, even sometimes before we know them.

Q Whether you think they are good or bad or you like them or you do not, do these speculations have any bearing on your ability to price your banking service, your loans?

A I don't think, although—I don't think necessarily [1448] on most of our business.

Q For your larger corporate business does it have a bearing?

A Yes, sure.

Q Mr. Chadwick, are you aware of any customers of your bank which you have lost because of the lending limit which your bank is now able to—

A Well, we're going back to that same list, Mr. Reycraft. All—each of those we have lost some business because of our inability to have a large enough lend rate. That's the only reason they go.

Q After the merger, assuming it takes place, would executive offices be maintained in New Haven?

A Yes.

Q How will the decisions being made in New Haven for New Haven customers be affected, if at all, by the proposed consolidation?

A I don't think they'll be affected at all.

I think Mr. Hawley and I, among your basic agreements—and he testified the other day—that we see this new bank developing with—certainly for the foreseeable future—with two divisions which will be operated very

much as they're operated today, the same people, same places.

It will take some time if we're going to change— [1449] if we're going to change all of the attitudes and philosophies and policies of fifteen hundred people, you don't do this overnight. So I say we're going to be very much like we are to our customers.

Q Mr. Chadwick, have you ever given any—

A Excuse me—

Q Yes, sir.

A I want to be sure, when you say executive office— the main office, the executive office of the new bank, will be in Bridgeport, but we will maintain management offices in both locations.

Q So the decisions for your loans, for example, for New Haven customers will continue to be made in New Haven, will they not?

A Those that affect them, surely.

Q Mr. Chadwick, have you ever given any consideration in your pricing decisions or competitive decisions to the possibility that the Connecticut National Bank may form a holding company and apply for a newly chartered bank in the City of New Haven?

A No, no.

Q Why not?

A Well, I can't speak for—I can't speak for Mr. Hawley or his associates, but I'll be very much surprised, [1450] knowing the way they think, what their objectives are, what their problems are, what their purposes would be, if they would consider that to be a likely opportunity for them.

Q How would you compare any such theoretical possibility, now that it has been brought to your attention, to the existing competition which you receive in New Haven from Hartford National, CB&T and Union Trust Company?

A As it bears upon Connecticut National Bank's coming into New Haven?

Q Yes, if you can compare it. I know you have not considered it realistic, but, if you can make any comparison between this theoretical possibility and the exist-

ing competition you face in New Haven from these three banks I mentioned.

A Everybody else in the room may understand the question, but I still don't, George.

Q On a day-to-day competitive basis, is it important to you the kind of competition you get from Hartford National, CB&T and Union Trust?

A Sure.

Q On a day-to-day basis, do you attach any importance at all to the possibility that CNB may enter New Haven by the method I have described?

[1451] A No, none whatsover, none whatsoever.

Q What interest rate, by the way, do you pay now on savings deposits?

A We're paying 4½ percent. That happens to be the highest rate of any commercial bank in our market area.

Q Is that the highest legal rate?

A No. No.

Q What is the highest—

A Excuse me—yes, it is; yes, it is. I'm sorry.

Q I think so, too.

Do you encounter any competition in New Haven or in your market area generally from mutual savings banks?

A We have two mutual savings banks, each of which are larger than we are. We have one federal savings and loan association, which is almost as big as we are. And there are two or three other small mutual savings banks.

So the answer, of course, is yes.

[1452] Q What percentage of your bank's deposits are time and savings deposits?

A About 50%, roughly.

Q And what percentage of your bank's loans are real estate mortgage loans?

A About 30%.

Q For these savings deposits and time deposits and for these real estate loans, do you compete directly with the mutual savings banks and savings and loans that you have described?

A Yes, yes. Well, we're competing, obviously, through newspaper advertising, radio advertising, and we're competing against each—against each others customers, we have mutual customers, our advertising, our personal salemanship all across the board is directed towards competing with them.

Q Mr. Chadwick, in your experience, is there any transferability of training or experience for a commercial bank executive with a savings banks, ability to be an executive in a savings bank?

A This is a very upsetting question. As you know, we lost our young cashier and vice—secretary of our corporation and vice-president about six months—he's now president of our principal mutual savings bank competition. He was with us about ten years.

Q And had he been with—

[1453] A I think that answers your question.

Q Yes, sir. Had he been with any savings bank prior to that time?

A No.

Q And he transferred to what savings bank?

A Connecticut Savings Bank.

Q And that's in New Haven?

A That's in the next block with us.

Q And that was six months ago?

A Maybe a little longer, it may be somewhere between six months and a year.

Q And what is his present position with that bank?

A He's president.

Q All right. When you—that's Mr. Paul Johnson, is it?

A Yes.

Q When you are considering new branch locations, do you give any consideration to the proximity of branches of mutual savings banks?

A Surely.

Q Why?

A They're as much a part of the competitive scene as anyone else, maybe more. But I have to say that as everyone else has testified, certainly Mr. Hawley's testified that—that there are numerous considerations that

go into a decision of where [1454] and when and how to establish a branch, and many of them have not even been discussed so far in this case. The principal ones have. I think the Judge has aptly said that there are many of these decisions that you make by intuition. You ignore what the research says and what the terms say, because for some reason or other you feel there's something happening that you want to branch at a certain place at a given time.

There are—I don't know of any standard rule or book or research criteria or research vice-president—and this is with all due respect to our research people—that necessarily put all the answers together that satisfy a bank management.

Q So you use your own judgment—

A Yes, sir.

Q —as chief executive officer when all the facts are before you?

A Yes, sir.

Q And that would include the fact that a saving banks might be in the area?

A Yes, sir.

Q Mr. Chadwick, can you tell me in your own words—tell us in your own words, why you think that this proposed consolidation would be beneficial to the public?

A Most of the reasons—most of the reasons I think have been reviewed here a number of times. For my bank and for [1455] my stockholders and for my customers—I say "my" in quotes—for our—our relationships and in point of time and history of the changing banking scene in Connecticut, there are many reasons for it.

Three and four years ago there were not the same reasons, but there are more reasons today than ever before to the point that my corporate team says, "Mr. Chadwick, it's time for us to move."

Now, why? Obviously, the principal reason is the competition that we're now getting from Hartford. That's number one. We are not going to be able to continue to have the competitive abilities, capabilities that we

have had for the last hundred years with this change in competitive atmosphere.

If this is true, and if it's also true that our principal job is to compete for deposits, and since the deposit growth in our market area, the place where we have been doing business for the last 50 years, have not been growing, which all of the evidence here have shown, then, it's perfectly obvious we have got to look for ways to participate in those areas where deposits have been growing, where economy has been growing, where other things are happening.

We see now the necessity, not only for our customers, but for our stockholders and the employees, the staff of the bank, for—opportunities, we see the necessity now to move into [1456] a larger ballgame, de novo branching is slow and is expensive, holding company techniques are expensive and slow. What we're proposing is a swift, practical way to accomplish most of the things that we're talking about.

Now, to get back to your question about: will it help our customers? I think the answer there is crystal clear. Of course, it will. Because, again, we're talking about depositors, and if we can manage to control or to have a larger base of larger depositors who are not borrowing all of their funds all the time, then those idle funds, those temporarily idle funds we're going to get back into the communities where they're being created, they're going to be available for us to loan in the community where we are doing business. I think this is a tremendous business—

Q Do smaller borrowers tend to borrow more in relation to their deposits than corporate customers?

A I would think so. I'd find it difficult to prove it, but my feeling is—let me see if I can put a handle on it.

60% of our loans in dollars are to personal borrowers and to mortgage—home mortgage borrowers, and I am sure that it would be safe to say that those borrowers do not keep on deposit all the time the 70 million dollars that they're borrowing.

Q And you do not have any compensating balance requirements with them, do you?

[1457] A No.

Q Mr. Chadwick, you referred to the relative growth rate of the First New Haven National Bank. Do you recall approximately when the two Hartford banks entered New Haven?

A Well, it's been very recent, of course, for both of them. CBT bought Tradesmen's within the last two years, and Hartford National Bank bought the—

Q General Bank?

A General Bank. After that—I'd say both of those happened within the last two years.

Q Have you observed any impact on the growth of the First New Haven Bank following those two acquisitions?

A Yes.

Q What has it been?

A My answer to you is going to be somewhat different than I answered to my board of directors, you know. I'm getting paid to—I'm getting paid to maintain a defendable, competitive stance, so I said at the very beginning that we had somewhere around 50% of the market in our trade area for a number of years. We see an attrition, and it is now down to about 47 or 48%. And this comes directly, in my opinion, from the competition that we're getting.

Q Has your bank experienced growth since the entry of those two banks?

[1458] A Yes. Very modest, none in demand deposits, and very modest in time deposits.

Q You experienced no growth in demand deposits since the two Hartford banks entered?

A None to speak of. If you give me just a minute, I can—well, it's so small that it's not important.

Q Mr. Chadwick, in your opinion, if Connecticut National Bank as—excuse me—you want to say something?

A Yes, I want to be sure the record is correct here.

The first nine months of 1971 our average demand deposits were a hundred and thirty-eight million, for the first nine months in 1972 our demand deposits are a hundred and thirty-nine million, so, in fact, our average demand deposits for the first nine months this year are

less than a million dollars more than they were the year before.

Q Mr. Chadwick, it has been suggested or discussed in this case—the possibility that Connecticut National Bank might form a holding company and enter New Haven with a newly chartered bank. Do you have an opinion as to whether such an entry could be—and legally otherwise possible—could be effective if the bank were not to have offices in downtown New Haven?

A Gee, I would think, Mr. Reycraft, with the Union Trust Company at one end of the street and CBT at the other end of the bank, and with us and with Second National Bank and [1459] Hartford National in between, we're talking about the same kinds of numbers that Professor Peck was talking about this morning.

I would think if I were the president of a bank wanting to move into New Haven, I'd have to consider that very, very deeply, and I would think it would be a real deterrent to try to do something like this.

Q Do you think an effective entry in the New Haven area would require more than one office?

A Yes, sir.

Q What would you think would be a minimum?

A Really, there are at least—there are at least four definite trading centers in the city where I think he'd want to bank in each one of these places.

Q What are they?

A And depending upon how far he wanted to penetrate the inner city and put branches in the merging, what we call for better words, the inner city, he'd want more than this. He'd want one—certainly, one or two right downtown. He would want one in Broadway. He would want one somewhere out Whalley Avenue in the automobile district. He'd probably want another one—if he wants to match what the rest of us are doing—he'd want one up in Dixwell, he'd want one on East Street, I would think.

[1460] THE COURT: The thought that immediately comes to mind, Mr. Chadwick, that if the two Hartford banks, are you making these serious considerations and serious moves with one bank—why would CNB make less

of a dent with one bank? In other words, is it your testimony that Hartford National came in as an entrant by buying General, that's one bank?

MR. REYCRAFT: Yes, sir.

THE COURT: And CBT—

THE WITNESS: Excuse me. They already have branches.

THE COURT: Oh, I didn't know that.

Q How many branches did General have and does Hartford National now have?

A I think there were two, and I think they now have three, in addition to the main office.

Q So four altogether?

A Yes.

Q Four banking offices in New Haven?

A Yes.

THE COURT: So, therefore, you are saying that the Hartford banks have made an effective entry not only because of the General purchase—purchase of the General, but because they have two or [1461] three others?

THE WITNESS: In the neighborhoods.

THE COURT: How about CBT?

THE WITNESS: The same, they have one in the Knights of Columbus Building, which is right on the biggest corner of the city, they have one in the shopping center, they have one out in—up on Whalley Avenue. This is as far as I can go. I think there's one more somewhere. Probably four or five altogether.

BY MR. REYCRAFT:

Q Mr. Chadwick, in your opinion, would an acquisition by Connecticut National Bank, assuming it was—could be done, requires the willingness of the parties and all that —of—Woodbridge Bank and Trust Company provide an effective entry by Connecticut National into New Haven?

A I don't think so. I think—I think if it would be, you know, someone would have done it a long time ago. It's been there for some time. We have had several conversations with them from time to time, but it hasn't been for sale at the price that we thought it was—we thought it was worth paying.

The last I knew, the figures, they have something on the order of eight or nine million dollars of deposits. The premium that would have to be paid for that bank and looking towards the potential growth in that area which is very definitely [1462] restricted, our analysis shows that that area restricted by the Wilbur Cross Parkway as a geographic barrier and by West Rock and by the valley that goes down through there, so that what you catch from Woodbridge in Woodbridge is a very small business section and the traffic which comes in from Bethany and those areas there which normally is at high peak when the bank is not open, so we could not think from the standpoint—that Woodbridge is a particularly attractive place for us to be, and I would assume that somebody else would say the same thing.

Q Do you know how many offices Woodbridge Bank and Trust Company has?

A I believe their main office is the only one.

Q There's only one banking office?

A I think so.

Q And you are aware of the location of that office?

A Oh, yes, yes.

Q Where is it?

A Well, it's—what I said, It's just west of the Wilbur Cross Parkway on Amity Road, there's a small shopping center there, there are two or three automobile dealers there, there's one construction company there, two or three motels, couple of restaurants, as I say, you look at their deposit structure, they have been there now for seven or eight [1463] years, and if you look at the arithmetic and if the eight or nine million dollar figure is right, it is not the kind of thing that you look to to provide a lot of profit in a hurry.

Q Mr. Chadwick, there is a memorandum with which I believe you are familiar which has been identified by the government as an exhibit which has on its cover: We have a Plan. Are you familiar with that document?

A I am now.

Q Can you tell me when it first came to your attention?

A Well, it came to my attention, of course, in the afternoon that the Justice Department was taking my deposition and they confronted me with this memorandum that had been written by two of our staff members, Mr. Terzakis—maybe three—Mr. Terzakis and Mr. Johnson, as I recall. They were performing a function which I expect all officers to perform and that's to be thinking and writing, recommending and analyzing and passing to management their thoughts and recommendations.

This particular paper was a research study, and I believe a good one, that they made on the various avenues open to use to perform a—one or more kinds of holding companies and what they thought it would do for us, and I think the question that Justice asked me was, you know, what happened to this, did you take this to the executive committee, did your board [1464] give any discussion to this? And my answer was: no, the executive committee never saw it, and I really don't remember having read it too carefully. I got the impact of it and my guess is that it got what I call, for the want of a better word, a pocket veto, and that was the end of it.

I have read it since, of course, and I recognize it as having been a good paper, but one that was not timely for me to make a decision.

Q And, in fact, no serious consideration was ever given to it?

A No, sir.

Q Mr. Chadwick, can you tell me relatively how the cost of opening de novo branches in the New Haven area compares to, say, ten years ago?

A I can give you a—I can give you a perfect example. That just occurs to me, we opened a branch in Allingtown about ten years ago, and we did it for the purpose—or our plan was to make it one of the most inexpensive branches that we had ever built as an experiment. We thought at that time we were spending too much money on branches, and we had a management agreement that we were going to put a branch in Allingtown, it was going to be a good branch, but it was going to be the least possible price, and if I recall, we put in a nice branch for something under $60,000.00.

The truth is, fortunately, we outgrew this a little [1465] bit, but last year we replaced that branch in the next block with a building not much larger, a little more parking space, and I think the price tag on that was something like $300,000.00, for a rough guess, so the answer to your question is: yes, there's a substantial difference, not only in the building and land, but in equipment and, of course, the cost of people.

Q What is, in your opinion, the availability of desirable branch locations in the New Haven area at the present time?

A I don't think we, at this present moment—and our research is going on constantly—we are checking out locations constant—as I say, every day. We do not see at this point in time any location that interests us as a branch location. That does not mean that we might not tomorrow.

Q And why is that?

A Well, I suspect that most modern banks are doing what we're doing, and quite much more sophisticatedly than we used to, we have going on all the time what we call demographic studies, and you know what these are. These are attempting to make some guesses as to what's happening to the changing location of people, different kinds of people with ethnic implications, industrial implications, the movement of the kinds of people who would be expected to be branch customers tomorrow or the next day. We're watching this very carefully and we're using—we're using young people at Harvard, at Yale, [1466] computers to map this out.

This is beginning to tell us what we have already known, but it is beginning to describe the timing and the specifics, so that, yes, these things are happening very fast and we would expect to put a new branch when we see something like this developing, hopefully, ahead of our competition.

Q How, in your opinion, does—does the availability of branch locations now in the New Haven area compare to what it was five years ago and ten years ago?

A I think my attitude is, Mr. Reycraft, that new opportunities open up every day. I would expect the same

number of opportunities to develop in the next ten years as developed in the last ten years.

Q You would expect to branch at approximately the same rate that you have?

A I would think so.

Q Mr. Chadwick—

A And this is not because—necessarily because of the availability of locations, either, this is restricted by our ability from the arithmetic standpoint of what we can afford to do and talent, you know, how fast we can develop talent to manage the development.

Q Mr. Chadwick, if the proposed consolidation is effected, in your opinion, are any—would any new or improved [1467] services be available from the consolidated bank?

A I think more improved than new. There are some new that Mr. Hawley and I see, but there are a number of improved services that we are sure can be developed, and this comes from the ability of reassigning talent, of mixing the kinds of things that people are doing, of being able to have greater depth in an organization, some of these specialized services need new people; for instance, up until ten years ago none of us needed engineers in a bank, but we sure need physicists and engineers and mathematicians today, that we didn't need ten years ago. I would assume that the same kinds of things are going to develop as time goes on.

Yes, I see much more activity in what we call our municipal relationships, our municipal services. I see much improved international services, and this is not because we didn't do it in the past, but our customers are going to demand more of this kind of thing from us in the future and are demanding it so we're going to have to keep up with the need.

I see the merger helping us in these kinds of things, customer services, computer services. These are becoming much more sophisticated, demanding new kinds of people, new kinds of approaches to perform the services. The new bank will allow us to do these things better.

Q First New Haven Bank now is participating in an Edge [1468] Act corporation, is it not?

A Yes, sir, we own 50% of an Edge Act corporation, which is an international bank.

Q And what is that corporation doing now?

A It's doing nothing, as a matter of fact.

Q Why is that?

A Well, a number of reasons. One, again, the talent that we thought we had, from a practical standpoint, the young man who was heading it up died very unexpectedly about six or seven months ago, so we have had to kind of put this on the shelf and look around for somebody else. Two, the international scene has changed somewhat so that a neophyte international bank like ourselves has more problems in getting started than we thought. This doesn't discourage us from keeping it and continuing, but from an active standpoint, we only have one piece of business, and this is lease on a—some motel equipment up in Canada.

Q Do your two Hartford competitors, Hartford National and CBT, have any international capability?

A Yes, and, of course, they have for a long time.

Q And among Connecticut banks, how many of them are you which—how many of them are there which, in your opinion, have an international lending or advisory—bank advisory capability?

[1469] A George, I really don't know. I know the two Hartford banks have, I don't know how far along the Union Trust Company is, I don't know how far along Ben Blackford is in his capabilities, I have no way of knowing, but let me say we know how far along the New York banks are.

Q How far?

A And the Boston Banks. And they're in this territory and that's one of the things they're using to grab our customers, of course—have been in the past.

Q Are there any of the Connecticut banks, as far as you know, who are able to compete with the New York City banks in offering foreign services?

[1470] BY MR. REYCRAFT:

A I think both of the Hartford banks do. And we are beginning now in our small way—hopefully we're

beginning to do some of the things that we used to have to ask our New York correspondents to do.

Q Mr. Chadwick, in your opinion would the proposed consolidation enable the consolidated bank to have a better opportunity to enter the Hartford area?

A Yes. Yes.

Q Will you tell me how you think that might come about?

A One of the things that has concerned me a little bit with what I've heard in this case so far about this possibility of going to Hartford—well, let me say, generally speaking, first, I think a bank with the kind of capital and what we call leverage in our business, going into Hartford and buying, for instance, one of those banks—we'd be much better able to do this than either—neither of us can do it now; so the chances are very good that we'd be able to perform that function at least much better than we can at the moment.

[1471] One of the things that I think we have overlooked in this trial so far is—or we have inclined—the economists have been inclined to talk about ratios, you know, percentages on earnings, assuming that if you have an 11 percent earning on capital, that you can do the same thing—that I can do the same thing with our earnings that the Hartford banks can.

We forget that ratios are not dollars. And if my bank or Bud's bank can retain after dividends and after taxes a million dollars, because we can retain 50 percent of our earnings, that if the Hartford banks can retain 50 percent of their earnings they're talking about three million dollars; they've got three times as much mileage out of those dollars to deal in the purchase and development of bank systems.

So we have—so you walk away from ratios pretty fast. You have to talk about dollars and prices. So that, frankly, I don't get too excited or I don't get—I'm not misled by what we can do with a percentage of earnings on capital. I have to concern myself with how many dollars it's going to take of my stockholders' dollars to purchase a bank.

And on that thesis the Hartford banks, of course, are

at least three or four times better able to do this than [1472] we are.

Q Would you expect, if you were going to acquire a Hartford bank, one of the smaller Hartford banks which the government has identified, that you would have to pay a premium for that bank?

A Of course.

Q A modest premium or pretty substantial?

A I don't think there's any rule of thumb necessarily applicable. You go to get married to somebody and, you know, you have to buy a diamond and you have to do all the things to court the bride.

I guess the nearest—the nearest formula that I could guess would be that we would have to pay at least ten times their earnings, their annual earnings. Now, I haven't—haven't got their figures here, but this would be the minimum.

Q Would I be correctly interpreting that by saying that that would mean that it would not contribute anything to your bank's earnings for a period of ten years? It would take you ten years to pay for it?

A It would have to pay for itself.

Q Again, in using the terms which the economists have been—

A This will not deter, I suspect, the board of [1473] directors and the stockholders and the new management of what I call the new bank for giving serious thought and direction to this kind of thing, no.

Q In the terms which the economists have been using, do you think that the proposed consolidation would make the consolidated bank a more likely entrant into Hartford than either of the existing banks is now?

A Yes, and for one additional reason:

Our stock—on the difference between the market price of our stock and the book value and the tradeability of our stock with someone else's stock separately, it's pretty narrow. I would expect that if this merger is successful, we're allowed to put these two banks together, that there would be an immediate appreciation, the general public, in the market of our stock, and would give us more than the sum of the leverages that we have now.

Q What approximately is the price-earnings ratio of First New Haven stock at the present time?

A Less than eight, I think.

Q At what price-earnings ratios are the Hartford banks selling, if you know, Hartford National and CB&T?

A Probably—my guess is it's ten. Mr. Reycraft, this would be—I don't have it here. I think it's ten or even better.

[1474] Q Would you expect that the consolidated bank would sell at a price-earnings ratio more comparable to most of the Hartford banks?

A I would be very much disappointed if it isn't.

Q Would this enable you to enter Hartford more inexpensively?

A No. But it would enable us to be able to afford the price, whatever that price is.

Q But, in effect, if your stock is worth more—

A Okay, yes, from that standpoint, yes.

MR. REYCRAFT: I have no further questions.

THE COURT: One question, Mr. Chadwick:

From your point of view, from a business point of view, how many banks and what banks, in your opinion, are doing a statewide business right now?

THE WITNESS: I think probably the only two, when you put it in that—I think the two Hartford banks can be proven to be doing a statewide business.

THE COURT: Except for some unusual occurrence, such as a merger or any other unusual happening, what banks, in your opinion, right now have statewide capabilities, and, if any, what are they or who are they?

[1475] THE WITNESS: I would have difficulty in saying that any other bank right now has that capability. I would think that over a period of time, if we want to pick ten years as a time or fifteen years, there's probably a potential of two or three existing banks to be moving in that direction.

But it would take a long time to—for any of us in the top group to get that kind of a classification without allowing us to do the kind of thing that we're asking to be done, and this is primarily to save time and to be able to—to be able to become more competitive and to thus

become more supportive of the economy, the needs of the economy in this state.

THE COURT: So you are not ready to accept from a business point of view any statements that there are five or six presently existing banks who have statewide capabilities unless you talk in terms of many years?

THE WITNESS: That's correct. In my deposition with the Justice Department I think I said three, and I withdrew that later, at least in my own mind. You will find in the record somewhere [1476] that I included Colonial. Colonial has a little broader geographical base at the moment than the rest of us do.

But I do not see them in the immediate future becoming statewide without—without something drastic happening. If they suddenly were able to merger with the Second Bank or someone else, someone in New Britain or something like this, then, of course, they'd move closer to that.

THE COURT: One last thing.

I asked Mr. Hawley to do this, and I think maybe I will ask you:

I have charts in front of me or somewhere in this myriad pile or piles of where you have branches. That does not necessarily, does it, reflect your market?

For example, if you had a branch in Orange, in your business judgment that branch could be covering part of Milford?

THE WITNESS: And probably does.

THE COURT: Okay.

So before this trial is over could you send me a list of towns that you consider is your market? Would you do that?

[1477] THE WITNESS: Yes, sir.

THE COURT: All right.

May I ask—

MR. REYCRAFT: Yes, sir.

THE WITNESS: Will you be sure that Jim gets that request.

THE COURT: I would like it both from Mr. Hawley and from Mr. Chadwick.

MR. REYCRAFT: Just a couple more questions.

BY MR. REYCRAFT:

Q Mr. Chadwick, on Colonial Bank & Trust Company, you did testify in your deposition that you thought at the time it might be considered a statewide bank. Is it in Hartford?

A No.

Q Is it in New Haven?

A No.

Q Is it in New Britain?

A No, I don't think so.

Q Is it in New London?

A No.

Q Is it in the eastern part of the state at all?

A No. No, it covers the western part pretty well but not in the eastern part.

[1478] Q During the ten or fifteen years which you have indicated might be a theoretical time frame within which other banks might move more actively throughout the state, do you have any feeling for what the Hartford National and CBT would be doing in the meantime?

MR. BENTKOVER: I object to that. It requires utter speculation from the witness.

THE COURT: I am not sure if it is utter speculation. I suppose one of the factors that you crank into any decision to merge or not to merge is what other banks are doing and what they might be doing in the future.

It will go to weight, but I do not think it goes to admissibility. I will take the testimony and maybe give it no weight later, but let's hear what he has to say about it.

A We heard this morning Dr. Peck speak from the record of the number of branches that have been opened by each of the Hartford banks in this same time frame, the last ten years, I believe, and, if I recall, the figure was something on the order of fifty—Does that sound like the figure he used?—compared with what we have done in the last ten years, and I know that we have averaged one or one and a half a year.

[1479] So, if you say what did they do the last ten years,

what would you expect them to do in the next ten years against what we could justify on the basis of what we could afford in the market area that we have, I would have to say I would expect them to move four or five times faster than we can.

MR. REYCRAFT: Thank you, Mr. Chadwick.

THE COURT: Cross-examination.

MR. McENERNEY: I do not have any.

THE COURT: Mr. Bell?

MR. BELL: No.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. BENTKOVER:

Q Mr. Chadwick, Exhibit D-60 is the copy of the Masters' report.

Do you have that report with you?

A I do not have it here. I have it in my brief case.

MR. REYCRAFT: I will give it to you, Mr. Chadwick.

THE WITNESS: Thank you.

Q You discussed a list of companies which you said did business with the Hartford banks.

A What page are you looking at?

[1480] Q That would be pages 26 and 27.

A Yes, sir.

Q Did you state that some of those companies may have done business with your bank at some time?

A Well, of this list here at least eight or nine of them. Some of them still do, of course.

Q Are you sure that they still do? Because the first sentence of page 27 states "Defendants have stated that none of these corporations is presently a customer."

A We're not their principal bank.

Q Then when the Master states here that none of these corporations is presently a customer of either defendant bank, it would be incorrect?

A Yes, I think so.

Q So that you do have business relationships—

A We have some business—we have some business from several of these, yes, sir.

THE COURT: That might be an important factor relied on by either side. Maybe we ought to get that squared away.

MR. REYCRAFT: I assume that—I am certain the Special Master relied on something somebody told us.

We will straighten that out.

[1481] BY MR. BENTKOVER:

Q Had you been the lead bank for any of these customers?

A No, sir.

Q So you had not been the lead—

A Wait a minute—we have been the lead bank for one of them. That's the Leonard Concrete Pipe Company. We lost that account about three or four months ago.

Q Then your testimony previously was not to the effect that you had lost the business of these 25 companies because you could not meet their lending limits; is that correct?

A No, the list that I think I'm referring to is a different list than this. The list that I have in mind is the list that we furnished of customers that we still have who are doing business in Hartford and New York. This isn't the list that I was referring to a moment ago.

MR. REYCRAFT: I am afraid that I confused you, Mr. Chadwick, because there are two lists.

THE COURT: I would like to have that squared away. I do have down in my notes that I would like to ask Mr. Chadwick about that, because it seems to me that the list he was referring to on page 26 and page 27 was a list that I marked, [1482] although with a question mark, as the list of businesses lost because of lending limit problems. Apparently that is not so.

THE WITNESS: That's the same mistake I'm making, your Honor. There's another list in—I think it's in the defendants' case—showing the list of customers. If I go get—you know, they include Echlin, they include Knights of Columbus, they include Armstrong, they include that list of names.

MR. REYCRAFT: Your Honor, I am afraid we will have to straighten it out overnight. I do not have the answer right off.

THE COURT: All right. But thank you for correcting the record on this. Apparently there is some confusion, Mr. Chadwick.

THE WITNESS: Yes.

THE COURT: I had down—and I think counsel for the government had down—pages 26 and 27; is that correct?

MR. BENTKOVER: Yes, your Honor.

THE COURT: All right, apparently there is a confusion. I would like it straightened out, maybe overnight Mr. Reycraft suggests.

[1483] All right, go ahead.

BY MR. BENTKOVER:

Q Mr. Chadwick, I think you did mention that you thought the merger would permit the two defendant banks to offer improved services, such as computers and international transactions; is that correct?

A Yes, sir.

Q Would you offer those services to customers within your service area?

A Yes.

Q Do you know of any such customers now who are not able to adequately find other sources of those services?

A Is your question asking me if I know of needs of customers who can't get it done anywhere?

Q Who are not able to find someone to supply those services to them.

A Yes. Yes.

Q Will you be more specific?

A Yes.

The—and I think I can use names here without being too—we have next door to us the largest private insurance company in the world, who have the office of CBT on its first floor, and we are in the process of trying to put together a program for them that they can't get done [1484] anywhere else, having to do with their mail payments and handling checks from all over the world.

And that's as far as I can go with you without disclosing many of the details of it, but that's an example, of what I'm talking about.

We also have a very specialized service to a whole industry that no one else has at this point in time that we could do much more with if we could combine our data processing systems.

Q What service is that?

A That's in the retail oil business.

Q That is a service which is performed on your computers?

A Yes, sir.

Q Do you perform this for customers in a very wide geographical area?

A Yes, we do.

This may not help my case, but my point is that with two sets of computers and two sets of people we can do twice as good a job with it in the areas where our big competition is.

Q You are the only Bank in Connecticut, then, with the capabilities to provide these sophisticated services?

A This particular service, at the moment. And the first thing we would teach our friend in Bridgeport would [1485] be how to use their machines to do the same thing.

Q I think you indicated that you wanted your bank to participate in growth in other areas of the State of Connecticut? Is that correct?

A Yes.

Q You are aware that CNB is basically centered in Bridgeport and other areas of Fairfield County?

A Yes.

Q Would that indicate that you want to participate in the growth in Bridgeport and Fairfield County areas?

A Yes.

Q I think you also indicated that you are looking for new branch locations in areas to the north and to the east of your present location?

A Can we go back to your—can we go back to your other question and—

Q Certainly.

A When you asked me if we were interested in participating in the banking business in Fairfield County, did this have any indication or were you suggesting that we, as the First New Haven National Bank, are looking for branch locations?

Q No, I did not suggest that. I just asked whether the growth in that area attracted you—

[1486] A Yes, sir.

Q —and was a factor—

A Yes.

Q —in your decision—

A Yes, sir.

Q —to merge with the bank which is based there.

A Yes, sir.

Q I next brought up the question of the areas north and east of your bank, which I think you indicated you were studying for new branches; is that correct?

A That's correct.

Q I know this is a somewhat sensitive area for you; you considered it confidential at your deposition, so I won't be more detailed than your testimony there. But at the deposition you mentioned towns in the eastern shore area, including Westbrook, Saybrook, Essex—

A Excuse me. May I have a copy of that map that shows the towns?

Q —Killingworth, Durham, Haddam and Lyme?

A Yes.

Q Those towns are outside of the service area you have defined as the two rivers area, aren't they?

A No. They're within the service area of the two rivers.

[1487] Q You have no branches anywhere there, do you?

A No, no, I didn't say that. I said I looked at our market as being defined by the two rivers. I didn't say we had branches in the whole—

[1488] MR. REYCRAFT: Excuse me. May I show Mr. Chadwick D-38?

A I'd just like to be sure that I have got my towns straight, that's all.

I think the Connecticut River, if I remember correctly, runs between Lyme and East Lyme, does it not?

Q You have no branches, I take it, within perhaps 20 or 30 miles of that area?

A That's correct.

Q And it is correct, also, that you did plan to open perhaps five offices in that general area at one time?

A I would say that we are still watching the development out in that general area. We have not closed the book on continuing to study that area.

Q And you also testified, did you not, that the reason you did not open those offices in that area was that—well, I'll read your answer: "I think my answer would be, on the advice of counsel to answer, yes, we did interrupt our—what probably would have been a time schedule".

A We were influenced by the opinion of counsel that that was one thing that ought to wait until we got by this trial.

Q By this antitrust case?

A Yes, sir.

Q Because of the realization that opening—

[1489] A I don't know the reason.

Q —new office—

A And further more, you know, we weren't that close to doing it, but what we're easily convinced—if I had felt that we had to do this for a practical reason, I think we would have moved irrespective, but it was one of the influences to slow us down a little bit. There's nothing sacred yet about the possibility of making a lot of profit in any one of those locations. If there had been, I'm sure we would have had a branch there a long time ago.

Q Moving to the New Haven area, you said that there were no locations for branches that interested you currently, is that correct?

A Yes.

Q And you also said that there were several areas in New Haven where you thought a bank should have branches, for example, downtown, Broadway, Whalley Avenue, Dixwell Avenue and East Street, is that correct?

A That's correct, I said that again just a few minutes ago.

Q Right, and if you did not have branches in any of those areas, would you want to establish branches there?

A Well, we do have branches in all of those areas.

Q I'm asking you if you didn't have branches, would you [1490] want your bank to be represented in those areas?

A Isn't the fact that they're there self-evident?

Q You said that your current passbook savings rate was four and a half percent, is that correct?

A Yes.

Q Has it been four and a half percent steadily for the last few years?

A It's a long time. I don't know how many years.

Q Didn't you drop the rate a couple of years ago to four and then raise it recently back up to—

A Not recently.

Q —four and a half?

A I think the last time we raised it had to be—had to be at least three or four years ago.

Q And you didn't drop it, then, recently?

A No, sir.

Q During the credit crunch of a few years ago?

A No, sir.

Q Are you aware that your bank—

A Do you want to know?

Q What?

A Do you want to know why?

Q I wasn't going to ask that, I was going to ask you if you were aware that the Connecticut National Bank had [1491] dropped their passbook rate to four percent?

A Yes, yes.

Q And is it correct that you and the Connecticut Nation Bank have formed a committee which is charged with the duty of reaching common operating principles and rates should this merger be effected?

A I don't think that's true. I think I said in my deposition that there were at one time several very informal groups that had been put together while I was

away to discuss what we thought might be common problems. As far as I know, they have not been meeting, no decisions have been made, and certainly Mr. Hawley and I haven't discussed it at all.

Q Well, then, is it your understanding that if this merger should go through, that the New Haven branch of the bank would offer four and a half percent—

A I have no idea, and I won't speculate.

Q And there's no reason which would require your bank to offer a common rate, is there?

A There's no reason for me to express an opinion until we get a new bank.

Q I'm asking: would your bank be required to have a common passbook rate?

A No.

[1492] Q You would offer different rates in the New Haven area?

A I would think so.

Q And in the Bridgeport area?

A Legal standpoint?

Q From a practical banking standpoint?

A I wouldn't know, I won't discuss the practical standpoint because I won't be committing the management of a bank that is not now in existence.

Q Then, it is practically possible for a bank to offer different passbook rates in the Bridgeport and New Haven area, is that correct?

A I would know of no reason why not. We have branches in our system where we have offered different rates at different times and have had no problem with it.

Q Then you have offered different rates at different times in only some offices, but not other offices?

A Yes, sir.

Q And would that be to meet competition in that particular area?

A No, not necessarily, because we saw from a—from another standpoint, we had a practical opportunity to do so. In both cases, I think we bought a bank, it had a different rate and we didn't change the rate in that town, and I know that it doesn't affect the circum-

stance too much. But to make a [1493] guess on what we would do in a new bank, I just can't do this. And I am sure Mr. Hawley would feel the same way.

Q So, then, that it is possible—well, I believe you also have certain differences in banking hours between your bank and Connecticut National?

A Yes, sir.

Q What are those differences?

A I believe in some of their branches, they're open Saturdays, and in none of our branches are we open Saturdays.

Q And your two banks were studying the question of whether or not to open your branches on Saturday?

A I don't think so. I don't remember any formal studies, certainly none that I was aware of or that I approved of or would approve of. Those problems wait until we get a new bank—

Q And so it is possible—

A —period.

Q —you may keep your offices closed on Saturday?

A Entirely possible.

Q It's possible CNB may open theirs—

A But they won't be two banks, they'll be one bank. We have different evening hours all through our system, I don't know whether—what difference it makes whether we're talking about Friday, Saturday or Sunday or Christmas, we try [1494] to have our services available to the needs of our customers in the particular area that they find them.

Q You indicated that after the merger your banks may be able to enter Hartford, is that correct?

A Our bank.

Q Yes, combined.

A After we're one bank.

Q Is the Hartford area an attractive area—

A Of course.

Q —for banking?

A Of course.

Q Why is that?

A It is the highest concentration of deposits of temporarily idle funds in the State of Connecticut, and we

want to reach up there and get the benefit of them to be able to spread them around the State in a little bit—in a little different fashion.

Q Are there any other similarly attractive areas in the State of Connecticut where your bank does not now operate?

A There are other areas that are attractive, but not similarly attractive. I would assume that as time goes on the whole area around New London, Groton—beginning to show some signs of some very interesting development, it's quite probable that a new bank of the size we're talking about [1495] be very much interested in moving up there.

Q Do you think such a move would be profitable for a bank?

A I would think that would be the only way we could reasonably go.

THE COURT: What is the situation up in that area, Groton, New London, Lyme, Old Lyme, as far as banks doing business in that market? I looked it up yesterday, but it seems to me there are only on or two banks up in that area.

THE WITNESS: Both the Hartford banks are there, and the trust company—the Union Trust Company is there, of course.

THE COURT: Shall we call it New London County?

THE WITNESS: Yes, I think the principal banking —other than mutual savings banks, and I do not have that information, I think it is in the information, but the principal banks there are the two Hartford banks and the Union Trust Company.

And when I say there are interesting things happening, this is no secret, that the development people in the State of Connecticut are talking about rather spectacular economic development in that area including, as you know, a rather large [1496] industrial complex and a jet port, and all the things that go with new facilities, housing, educational facilities, in addition to what's already there.

THE COURT: Am I overlooking something? But in D-27—for example, it says: Winthrop Bank and Trust,

Hartford National and CB&T, wasn't Winthrop taken overby—

THE WITNESS: Union Trust.

THE COURT: —within the last month? So to be accurate, D-27 really should say: Union Trust, Hartford National and CB&T, is that correct?

THE WITNESS: That's correct.

THE COURT: All right. Go ahead.

BY MR. BENTKOVER:

Q Mr. Chadwick, Exhibit P-93 is a copy of an interrogatory answer which was filed by your bank, and it gives information on merger discussions which First New Haven has held with other banks, and one such merger discussion was with the Colonial Bank and Trust Company of Waterbury, and it indicates that in 1968 your bank held discussions with Colonial?

A Yes.

Q Who initiated those merger discussions?

A I don't think I could document who. The principals in that bank and the principals in my bank, as well as the [1497] principals in other banks, of course, are friendly, have been friendly, have grown up in this business together, and Mr. Hooker, who is our executive vice-president, and I, had several informal conversations with Frank White and Mr. Henry, who is the chairman of the board up there, exploring the possibility of putting our two banks together, as you know, nothing came of it. Nothing came of it because, as I referred a moment ago, in order to have a marriage, you have to have both parties satisfied with the way this is going to be put together. We were not able to find a mutually satisfactory arrangement. And it never got beyond a reporting stage to either one of our boards. The boards never were asked to express an opinion at all.

Q I believe you also held similar discussions with the State National Bank, is that correct?

A I did not. That goes back a number of years where the real—rather direct conversations were held at about the time that the S&H—one bank holding company was being put together with the thought that by merging those

two banks first and then becoming a part of the S&H it might make sense for the same reasons that I explained a few minutes ago. That never came into being.

The only other conversation that I remember at all was prior to the time that Mr. Hawley and I started talking, I had a telephone conversation with Ben Blackford to inquire whether [1498] or not we were ready to court each other at that point in time.

Q Mr. Blackford called you? Called your bank, is that correct?

A I don't know what difference it makes, I don't remember whether I met him at a cocktail party or what. But it really—in the context of my thinking, it doesn't make much difference who called who.

Q And in 1967, your bank also held discussions with the Fairfield County Trust Company, is that correct?

A I think so. I had no part of this, so I'm not able to—in what year?

Q December of 1967.

A Okay. I think probably there were conversations between Mr. Ryder and Reid, my predecessor.

Q And which bank initiated those discussions?

A I don't know.

Q And those did not come to fruition, of course?

A No.

Q And afterwards the Fairfield County Trust acquired a bank in the New Haven area, is that correct?

A That's right.

Q Which bank?

A The Union-New Haven Trust Company.

Q Then I believe your bank also held merger discussions [1499] with the City Bank and Trust Company?

A That's correct.

Q In the year 1969?

A That's correct.

Q Who originated those merger negotiations?

A That was the City Bank and Bridgeport Trust Company.

Q Yes.

A Here, again, to put priority on who initiated what, I can't. I'll tell you Mr. North and I had a number of

conversations, we drew in committees from each of our boards. In that case, we went to the Comptroller's office, we went so far as to getting a vote on our board that we would pursue this. When we got down to the fine print in some of the contractual necessities that were going to be required, we mutually agreed to break off the conversations. And that was, of course, before it ever went to stockholder—for any stockholder attention.

Q I believe you also indicated that CBT acquired Tradesmen's Bank in New Haven and Hartford National acquired General Bank in New Haven within the last two years—

A Yes.

Q —is that correct?

A Yes.

Q But your merger discussions with all these other large [1500] banks in Connecticut were held prior to the time the Hartford banks entered New Haven, is that correct?

A Well, that's right. Because we have been talking about this one for almost two years.

Q I'm talking about your discussions with Colonial—

A Yes.

Q —and State National and City Trust and Fairfield County.

A That's right. For obvious ethical, moral reasons, we don't talk with two at once. So it had to be prior to the time that we started with Connecticut National Bank.

THE COURT: I don't think you got the original question. Read the original question.

(Question read.)

A I don't know, I really don't know the dates. I foundered a little bit on the Hartford bank entries, I don't know those dates, it had to be close. I don't know of any reason why we wouldn't have been talking while they were moving into New Haven or while we would not, I don't know why it is—

Q Then, you aren't able to place in proper time perspective those questions?

A No. It's all been happening quite recently, in terms of the last four or five years.

MR. REYCRAFT: May I show the witness an exhibit, [1501] D-16?

THE COURT: If it will help.

What question is pending?

MR. BENTKOVER: I had asked Mr. Chadwick before to place—to state whether or not he was discussing mergers with other large banks before the Hartford banks entered the New Haven area, and Mr. Reycraft just gave him this exhibit to refresh his recollection.

A The date here for the merger with Hartford National with General Bank is 1970 and the date for CBT and Tradesmen's is 1969. So my answer would have to be that my guess is that our conversations were going on at the same time these conversations were going on.

Q Which was before the Hartford banks entered New Haven?

A Not before we knew they were coming, though.

Q You were talking as early as 1967 with Fairfield County Trust, is that correct?

A Yes.

Q And in 1967 did you know that the Hartford banks were coming into New Haven?

A Yes.

Q 1969?

[1502] A Yes—I knew they were coming, but I didn't know when.

Q You didn't know they had a particular merger in mind at that time, did you?

A Yes. I knew they were talking, and I think the testimony has become crystal clear in this case that those of us who have been in the banking business in Connecticut for a long time do talk with each other very frankly and very honestly, and I can tell you that the chief executive officers of both of the Hartford banks had hanging over my head like a Damocles sword for the last ten years that they were coming to New Haven, but until they got close to doing it, we had little—we had reason, I suppose, to vacillate and to mind our own business in our own back yards.

THE COURT: Perhaps this is an appropriate time for me to ask you. You used an expression that reminded me of an expression that one of the experts used

earlier. He said most of the banks were keeping to their own turf, and you used the expression "back yard". Could you very quickly tell me what the history of banking has been with respect to that?

THE WITNESS: I could tell you, your Honor, what the history of what my bank has been and the change in philosophy and attitude, if that is what you are talking about, and I am sure you know that our [1503] bank has the oldest national bank charter in the United States, we are, without question, operating as the longest single national bank in the country under the charter that was granted in April of nine—1863. And the history of our bank's growing up in New Haven with the way New Haven has grown was a colonial kind of a growth where the territory that I have defined here before was sufficient unto itself to stay competitive and to grow. We have been growing, on a guess, about 10% a year.

In the meantime, we have changes on our board, we have changes of management. I think I'm the tenth president of the bank, which means that, you know, you aren't running a bank for too long. In the meantime, we have a changeover in our board membership, we have 25 members on our board and the contexts and the attitudes and the philosophies of these men change with the times. So that ten years ago, or even as recently as five or six years ago, my board wasn't interested, really, in giving up its —if he used "a piece of turf", the place where we were doing business, my board had no reason, really, to be concerned and to get excited about defending ourselves.

This has all happened very recently, but we also [1504] have new people, we have a relatively new president. We have new young people on our board, we have new competition, changes come about, that we're going to need a bigger piece of turf as we see going down the road in order to be the kind of a leader, progressive growing bank that we have always been that—but we need a little larger fence, I guess.

THE COURT: I think my question was: what's been the history in Connecticut of banking? I got the impression from another witness that through, say, 1955, the general history of banks has been to keep to their own

turf, and then in 1955 on, at least the two Hartford banks started to spread out and become statewide. Have you found that to be a fact?

THE WITNESS: That's the truth, that's the truth.

THE COURT: Is that what's happened. Say, 20 years ago each bank kind of had its own turf, its own back yard, but that started to be violated by the two Hartford banks?

THE WITNESS: I think we probably all started violating a little bit in our own little way. Some of them had the ability to violate it with much more force and much more quickly than the rest of us had been able to.

[1505] To zero in on your question, if I may give you a specific example, and this is only 20 years ago, which is really not a long time ago, in New Haven we had four or five banks, and my bank was then the largest, the Union Trust Company was another, would you believe that those banks at that point in time never solicited each others customers, and that an officer of a bank, if he was caught soliciting another bank's customers, would be seriously instructed not to. It was a closed book, and this is what's happened in the last 20 years, and it's turned 180 degrees around. Not only in each local area, but national, statewide area.

THE COURT: All right.

[1506] BY MR. BENTKOVER:

Q Getting back to the question of merger discussions, I believe that your bank made an offer in 1962 to acquire the Wallingford Bank & Trust?

A Yes, we did.

Q What was the reason you offered to purchase that bank?

A Well, you are going back again, Mr. Bentkover, before my active participation in these things.

My recollection is—my memory would say that the people who were managing our bank saw things happening in Wallingford and they saw an opportunity to get a foothold—that's the word that's been used around—and our offer was not good enough.

Q That bank rejected your offer?
A Sure.
Q Then, in 1968, your bank did open up a de novo branch in Wallingford; is that correct?
A That's correct.
Q Because you considered Wallingford an attractive area?
A What was that, ten years later?
Q Six years later.
A Six years later.
[1507] Q In 1964 did the First New Haven Bank make an offer to acquire the Guilford Trust Company?
A Yes, sir.
Q What was the reason?
A In the deposition I think I expressed some concern about naming the reason. Let me just say that the reason there involved personalities.
Q I think you were talking about a different bank?
A Both, both, both.
Q That offer was rejected, was it?
A Let me say that the owners of that bank—the things that they needed in the package we were not willing to give them.
Q So that offer was rejected?
A Yes, sir.
Q Then in 1965 your bank did open a de novo branch; is that correct?
A That's correct.
Q Then in 1964 I believe the First New Haven National Bank offered to purchase the Birmingham National Bank in Derby; is that correct?
A I'm not sure—I don't know whether we got to the point of making an offer. Conversations went on, but I'm not familiar enough with how far they went to say that there [1508] was an offer made.
Q Exhibit P-93, which is a copy of your answer to our interrogatory, states that an offer was made.
A Okay.
Q And rejected.
But it is correct, isn't it, that in 1966 your bank did open a de novo branch in Derby?

A Yes, sir.

Q And you considered the Derby area attractive for a branch; is that correct?

A We did at that time, yes, sir.

Q And the same is true of Guilford and Wallingford?

A Yes, sir.

MR. BENTKOVER: No more questions, your Honor.

THE COURT: Redirect?

MR. REYCRAFT: No redirect, your Honor.

THE COURT: Anyone at counsel table?

MR. McENERNEY: No, your Honor.

MR. BELL: No, your Honor.

THE COURT: You are excused, Mr. Chadwick.

THE WITNESS: Thank you, sir.

(Witness excused)

THE COURT: May I see lead counsel—that is, [1509] Mr. Reycraft, Mr. Clark, Mr. McEnerney—in five minutes in chambers.

(Whereupon, at four o'clock in the afternoon, court was adjourned until Thursday, November 2, 1972, at ten-thirty o'clock in the forenoon.)

[1510]
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 14,583

UNITED STATES OF AMERICA, PLAINTIFF

versus

THE CONNECTICUT NATIONAL BANK and THE FIRST NEW HAVEN NATIONAL BANK, DEFENDANTS

and

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, INTERVENOR

United States Court House
915 Lafayette Boulevard
Bridgeport, Connecticut
November 2nd, 1972

Before:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

[1511] Appearances:

DEPARTMENT OF JUSTICE
Antitrust Division
Washington, D.C.
By: JOHN W. CLARK, Trial Attorney
FRANK N. BENTKOVER, Trial Attorney
KELLEY V. REA, Trial Attorney

Messrs. CADWALADER, WICKERSHAM & TAFT
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New York, New York
By: GEORGE D. REYCRAFT, Esq.
JOHN BOYER, Esq.
HAVEN ROOSEVELT, Esq.

Messrs. PULLMAN, COMLEY, BRADLEY & REEVES
855 Main Street
Bridgeport Connecticut
By: HUNTLEY STONE, Esq.
GROVE W. STODDARD, Esq.

Messrs. GUMBART, CORBIN, TYLER & COOPER
205 Church Street
New Haven, Connecticut
By: RICHARD G. BELL, Esq.

UNITED STATES TREASURY DEPARTMENT
15th and Pennsylvania Avenue, N.W.
Washington, D.C.
By: CHARLES H. McENERNEY, JR., Trial Attorney

FORD BARRETT, Trial Attorney

[1512] THE COURT: Are the parties ready to proceed?

MR. REYCRAFT: Yes, your Honor.

William Krafchik.

WILLIAM S. KRAFCHIK, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: What is your name, sir?

THE WITNESS: William S. Krafchik.

THE CLERK: Will you spell that for us, please?

THE WITNESS: K-r-a-f-c-h-i-k.

THE COURT: Where do you live?

THE WITNESS: Norwalk, Connecticut.

DIRECT EXAMINATION

BY MR. REYCRAFT:

Q Mr. Krafchik, what is your present position?

A Vice-president for Corporate Planning, Connecticut National Bank.

Q And how long have you held that position?

A As of now, about two and a half years.

Q What are your duties as vice-president in charge of corporate planning for First National—Connecticut National Bank?

A Well—try to state it as briefly as possible. [1513] Long-run and short-run strategic and profit planning for the bank.

Q Does that include capital planning?

A Yes, sir.

Q Deployment of capital?

A Yes.

Q What did you do before you became an officer of Connecticut National Bank?

A I was with First National City Bank in New York for about ten years.

Q And will you describe your duties with First National City Bank?

A About five or six of those years were spent in branch management, latter part of that period was spent in credit analysis and in consulting work.

Q And prior to that, what did you do?

A Prior to that, I was in college.

Q Would you describe your consulting duties with First National City in a little more detail?

A I guess it was about 1968 or '9 that the bank decided to spin out of the group which was called Financial Engineering, which was doing all sorts of credit analysis work for the bank and its customers, spin out of that group, consulting department made up of several officers who did financial planning work [1514] for customers of the bank.

Q Were these customers industrial companies or other banks?

A Both.

Q Did you participate in the preparation of the application which was submitted to the Comptroller of the Currency in this proposed consolidation?

A Yes, I did.

Q And did you direct the preparation of maps and exhibits in connection with that application?

A Yes, sir.

Q And in connection with the preparation for this trial?

A Yes.

Q Mr. Krafchik, let me refer you to D-36. Is this an exhibit with which you are familiar?

A Yes, it is.

Q Will you tell me what it shows?

A It shows the towns in the State of Connecticut which are closed to de novo branching by virtue of being the location of the home office of commercial banks.

MR. REYCRAFT: Would your Honor like to see this?

THE COURT: That's all right.

Q Mr. Krafchik, I show you D-37. I ask you whether you are familiar with that map?

[1515] A Yes, sir.

Q And what does that map show?

A This is a composit map which indicates, first of all, in black the towns that are closed similar to D-36, and then it goes beyond that to show, based on the State's estimates of 1980 population in each town, those towns which would have less than 2600 people per current commercial banking office, those towns which would drop below 2600 if one more banking office were added to the town, and those towns which would drop below 2600 population per office with the addition of two more banking offices.

Q Where did the number 2600 come from?

A We observed that there were something like 41 or 42 towns, I think it is, in the State that have no banking offices, and we observed that their average population was 2600 people, and we took that as a—as a— as a benchmark or a threshold figure, which suggested a level at which no banks were inclined to enter.

I might add it is—that's approximately half of the State average for all towns population per banking office.

Q In other words, the statewide average of population per banking office is approximately what?

A Oh, it is, if I recall, 53 or 5400, something like that.

Q So the 2600 number you picked there—used there is very conservative, is it not?

[1516] A I would say so, yes.

Q Mr. Krafchik, I'll show you D-38 and ask you what that map shows?

A D-38 shows the office towns of the First New Haven National Bank, the diagonally shaded areas are towns—indicate the towns in which they operated in 1960, and the black—blacked in towns indicate those which have been entered since 1960 until the current time.

Q And how many such towns are there?

A There are ten towns in all. First New Haven was in five towns in 1960, they're in ten towns today.

Q Mr. Krafchik, I show you D-39. I ask you whether you will describe that map?

A This is similar to D-38. It indicates the office towns in which the Connecticut National Bank operates.

Q And what does it show with respect to changes since 1960?

A Well, since 1960, it indicates that we have entered eight new towns.

Q I show you D-40 and ask you if you will describe that map?

A D-40 is a composite of 38 and 39. It indicates the current office towns of the defendant banks.

Q I show you D-41. I ask you to describe that map.

[1517] A D-41 indicates the office towns of the Connecticut Bank and Trust Company as they existed in 1960 and as they exist today.

Q How many new towns did Connecticut Bank and Trust Company enter since 1960?

A 23 new towns.

Q I show you D-42, and I ask you to describe that map?

THE COURT: Excuse me. What was the question to which you answered eight new towns just a few moments ago?

THE WITNESS: That would be the number of new towns that the Connecticut National Bank has entered since 1960, your Honor.

THE COURT: And what was this last one?

MR. REYCRAFT: CB&T, Connecticut Bank and Trust Company. Would your Honor like the maps?

THE COURT: Well, just let me get my notes straight. CNB entered eight new towns?

THE WITNESS: That's correct.

THE COURT: Since 1960? But CBT entered 23?

THE WITNESS: That's right.

THE COURT: That's right. I was confused. Go ahead.

[1518] MR. REYCRAFT: Would your Honor like to look at the exhibits?

THE COURT: No, that's all right. I followed him.

Q Mr. Krafchik, I show you D-43, and I ask you if you would describe that map?

A D-43 is a composite which shows the accumulative office locations of both the Hartford National Bank and the Connecticut Bank and Trust Company around the State.

Q And does it show the towns entered since—combined towns entered since 1960?

A It does not. It—it merely shows where they are today across the State.

Q Right.

A You would have to look at the individual maps for those—

Q The two separate maps show it, right?

A Yes.

Q Mr. Krafchik, I show you D-44, and I ask you to describe that map?

A D-44 is similar to the others, it indicates the office towns of City National Bank in 1960 and those they've added since that time.

Q I show you D-45 and ask you to describe that map.

A That, again, is an office town map. In this case, it's [1519] the office towns of Colonial Bank and Trust Company.

Q And I show you D-46, and ask you to describe that map?

A D-46 is the office towns of the First Connecticut Bank Corporation in 1960 and today.

Q And D-47?

A Similar map for the—the Second National Bank of New Haven.

Q And D-48?
A An office town map for the State National Bank.
Q And D-49?
A The office towns of the Union Trust Company.
Q And what's D-49 show with respect to the change in new offices for Union Trust Company since 1960? I should say: Fairfield County Trust, because that's what it was in 1960.
A If I count this correctly, they've entered 14 new towns since 1960.
Q Pardon me?
A 14 new towns.

[1520] BY MR. REYCRAFT:

Q I believe I omitted 42.
Will you describe that map.
A That's the office towns of the Hartford National Bank in 1960 and today.
Q What does it show with respect to what has happened since 1960 with Hartford National Bank?
A They've entered fifteen new towns.
Q I believe you said CB&T had entered twenty-three since then?
A That's correct.
Q Mr. Krafchik, are you familiar with—
THE COURT: Excuse me. Do we have the same figures for the First New Haven, or did you mention that?
THE WITNESS: I believe I mentioned, your Honor, that it was five.
Q And for Connecticut National?
A Eight.
Q Mr. Krafchik, I believe you are also familiar with D-1.
Do you have that?
A Yes.
Q Will you describe generally what D-1 shows?
[1521] A D-1 is titled "Comparison of actual September 30, 1971 IPC demand deposits" with the pro forma picture giving effect of the divestiture of our Orange, Milford, and Pershing Drive, Ansonia, offices. It's a com-

plete geographic sort by town of all of the accounts and the dollars involved that we hold as demand deposits in the bank. It indicates, for example, that 78 percent of our accounts come from Fairfield County towns.

Q These pages are on a county basis, are they not?

A The first page is Fairfield County, the second is New Haven County, and then all of the other towns in the state are the third section.

Q It shows approximately 78 percent of your business comes from Fairfield County; is that correct?

A That's correct.

Q And the pro forma percentage after divestiture?

A After divestiture would be 84.4 percent from Fairfield County.

Q Coming from Fairfield County, all right.

Will you refer to D-3, Mr. Krafchik, and tell me what that exhibit shows.

A D-3 indicates the Connecticut National Bank's IPC demand deposits from First New Haven National Bank office towns.

[1522] Q What does it show prior to and subsequent to the proposed divestiture?

A It shows that prior to divestiture the bank has nine million seven in deposits from First New Haven towns, office towns, and that post divestiture the total would be two million dollars.

Q Can you tell me anything about that two million dollars which would remain after the divestiture?

THE COURT: Excuse me. Are we talking three or six?

Q How many offices have you assumed would be divested?

A Three.

Q All right.

A The two million dollars remaining—there are four accounts that I'm aware of which total approximately one million dollars. They are two public utilities which operate in a large area of the state and two national sales corporations.

In the case of the public utilities—well—

Q Are these accounts which, in your opinion, have choices beyond the immediate area in which the accounts are carried or nominally?

A Well, our files indicate that—I can recall that one of the public utilities, for example, banks with [1523] eighteen different banks in the state and two or three New York banks that we know of. It's a similar situation for the other public utility, something like fifteen banks around the state.

As far as the two sales companies go, we know from our files that one of them banks with three or four banks in Connecticut and with banks in at least four other states. One of those sales companies, I might add, banks exclusively with Connecticut National Bank.

Q Mr. Krafchik, of the approximately one million dollars which would remain, would this be small, retail-type business generally?

A I would say so, since we're talking about over 1700 accounts. There are some business accounts that I'm aware of that are in those offices.

Q But they are predominantly small retail accounts; is that correct?

A For the most part, yes.

Q Mr. Krafchik, will you refer to D-4?

This was prepared under your direction, was it not?

A I prepared it myself, yes.

Q We have had references to this exhibit before, but just in order that the record is clear would you explain exactly how it was done and what it is intended to show?

[1524] A Yes.

I went to the Conneticut Bank Commissioner's annual report for the years 1955 and 1971 and simply went to the index at the rear of the report, which indicates the identity of the banks operating in each of the towns in Connecticut; and so this table, therefore, reflects the number of banking institutions operating in each of these towns as of those two points in time. It does not attempt to reflect the number of branch offices; it is simply the number of different banking institutions that are there and available to the public.

Q For example, on the first page, where it shows increases of twenty, you do not mean there are twenty new banks in Fairfield County, do you?

A No, I don't.

Q What do you mean?

A That indicates that in twenty of the twenty-three Fairfield County towns there are more banking alternatives available today than there were in 1955.

Q In how many were there less alternatives?

A None.

Q With respect to New Haven County, what does it show?

A It shows that of the twenty-seven New Haven County [1525] towns, in twenty-three of them there are more banking alternatives today than there were in 1955.

Q As far as New Haven is concerned, it shows there are two less, does it not?

A Of the City of New Haven, that's right.

Q You heard Dr. Peck's testimony, did you not?

A Yes, sir.

Q If one were to assume that the two largest banks were the most likely entrants into New Haven and had entered by the government's proposed new chartering route rather than by acquiring banks in New Haven, what impact would that have had upon the alternatives available in New Haven in 1971?

A Well, it would have—there would have been no decline from 1955.

Q If it had been possible to do so?

A That's correct.

Q What does the exhibit show with respect to the balance of Connecticut?

A In the balance of the state, there are 119 other towns in the State of Connecticut, and in 64 of those towns there are more banking alternatives today than there were in 1955, and in one—one of those towns there are fewer.

Q In all of Connecticut it shows only two decreases, [1526] does it not, between December 31, 1955 and December 31 of 1971?

A That's correct.

Q Again, the net increases are not new banks; they are alternatives in the form of branches or new banks; is that right?

A That's correct. That's new—new companies doing business in those towns.

MR. REYCRAFT: Will you mark as Defendants' Exhibit No. 69 a one-page document headed "Department Growth, December 31, 1969 to September 30, 1972."

Q Mr. Krafchik, do you have a copy of D-69?

A I don't think I do.

Q Let me show it to you.

Was D-69 prepared by you or under your direction?

A It was prepared by me, yes.

Q What does it show?

A It indicates the—the dollar increase in deposits and the percentage increase in deposits by the two Hartford banks and by the two defendant banks on a combined basis since the period immediately before the point at which our consolidation discussions began.

It indicates that in terms of dollar increase in [1527] deposits, the two Hartford banks have in that two and a half years or so grown more than the total deposits of the merged bank. The two Hartford banks together have increased their deposits by some $750,000,000, and the combined deposits of the consolidated bank would have been 672,000,000.

Q In what period of time is that?

A This is in—since—since the end of 1969, so it's two years and nine months.

Q Are the figures the current figures, the latest available?

A September 30th of 1972, that's correct.

MR. REYCRAFT: Will you mark for identification as D-70 a one-page document headed "Competitive financial power of four largest banks with offices in the Bridgeport and New Haven SMSA's," expressed in terms of total resources.

Q Was that document prepared under your direction, Mr. Krafchik?

A I prepared it, yes, sir.

Q What does it show?

A It indicates the—the first two graphs indicate the comparative financial strength of the four largest banks operating in the two SMSA's under discussion here, as expressed in terms of their total resources. In the case [1528] of New Haven SMSA it's Hartford National, CBT, Union Trust and First New Haven. In the case of Bridgeport SMSA it's Hartford National, CBT, Union Trust and Connecticut National.

The total resources of the two Hartford banks are in each case in excess of 1.2 billion dollars; the Union Trust is in at about 600 million; the First New Haven at a little over 300 million; and the Connecticut National about 400 million.

THE COURT: These figures are over and beyond, do I understand correctly, demand deposits? Did you say total?

THE WITNESS: The total resources, yes, sir.

THE COURT: Those categories probably are well set forth in the transcript somewhere, but could you just briefly give me the categories. The demand deposits, installment loans, mortgages—what else?

THE WITNESS: Well, you could consider either side of the statement of condition, your Honor. If you want to consider the liability side first, it would be the total deposits of the bank, their other trade liabilities and their total capital position would add up to their total liabilities and capital. And, on the asset side, it would be [1529] their cash position, their securities portfolio, their total loan portfolio, their investment in plant and equipment and other miscellaneous assets; this would be the total resources—total dollars available to the bank to put to work in some form or other, which is, I think, a good indicator of financial strength and financial power.

THE COURT: Would it include real estate holdings and so forth?

THE WITNESS: Yes, sir.

THE COURT: How does all this dovetail into a figure that I heard earlier in the trial? The figure was 3.3 percent increase by the Hartford banks and X percent by the six leading banks. How does all this dovetail into those figures? What is the correlation?

MR. REYCRAFT: That, your Honor, was, as I recall it, a claimed increase in the amount of deposits or assets held by banks throughout the state, and this was part of Dr. Stokes' testimony, in his exhibits, in which he pointed out that over a period of time CB&T and Hartford National had increased their share of total bank assets in the state by, I believe it was, something like 3 [1530] percent—the exhibit will show it—and that the next six banks—not two but next six banks—were relatively stable in the share which they held of the assets, bank assets, in the state.

THE COURT: That figure was not, therefore, an increase in the market share of business; it is the assets?

MR. REYCRAFT: That is right. That is one measure that, it has been argued, would be relevant in the case. There are about six billion dollars of commercial bank deposits in the state, and the total bank assets would be somewhat more than deposits because of the bank in-house capital; and the percentage figure that your Honor referred to was the percentage of the total bank assets in the state held by those two leading banks.

THE COURT: Are there figures in the transcript on increase in share of the market, say, of demand deposits and how that has varied over the years?

MR. REYCRAFT: By Hartford banks over the years?

THE COURT: Yes. So long as it is in there.

What does that show—I am curious—as you read the figures?

[1531] MR. REYCRAFT: Yes. D-13 shows that the two largest banks in the state in 1959 had 34.5 percent of the total bank assets, I believe, in the state, and in 1970—it goes on to project into 1982, but in 1970, which are the last actual numbers in this chart, it shows 38.5 percent.

So there is an increase of about 4 percent.

It shows for the next six banks an increase of 35.8 to either 37 or 37.9.

THE COURT: You see what I am getting confused a little bit about, because the figures you now mention I recall, have some recall with me. There is a difference

between total assets and market share of deposits, because at least one banker has said to me "The core of our business, the health of our business, depends on deposits." If some bank happens to own some big building in the center of Hartford which increases its total assets on its books, that may have a difference on the true picture of what it is doing.

MR. REYCRAFT: Yes, sir.

THE COURT: So you have used both expressions. You have said total deposits, and then you have said total assets with respect to the [1532] same exhibit here. Could you square me away on that?

MR. REYCRAFT: Yes, sir.

Deposits are very closely correlated to assets. Dr. Peck, for example, testified yesterday and the day before that he had considered using either assets or deposits as the indicater of the size of the banks in terms of what the government has claimed is the likelihood of their ability to enter, and he said that with respect to the 27 or 29 banks that he considered, they were identically ranked, perhaps with one exception, with respect to assets and deposits.

So that I think, your Honor, there is no case—and Mr. Krafchik knows more about it than I do—there is probably no case in the State of Connecticut where a bank might own a $300,000,000 building, for example, which would distort its total assets, so it would not be a good indicator or a good substitute for deposits as a relative size indicator. I think that there is no such situation and that your Honor can take assets as being a fair indicator of the relative banking strength in terms of deposits of each of these [1533] banks.

BY MR. REYCRAFT:

Q Mr. Krafchik, you are a banker and I am not. Does that sound reasonable to you?

A I would only add one more comment to that, and that is that banks are simply not permitted to use deposit dollars to put up buildings; it must be capital dollars. And, in fact, there's a formula which limits the ex-

tent to which they can invest those capital dollars in plant and equipment.

THE COURT: Yes, I see the correlation Mr. Reycraft has pointed out. But I was just sitting here saying to myself it is possible that a bank's assets can increase while its share of the deposits in the market has decreased. But apparently not. I mean apparently—

MR. REYCRAFT: Your Honor is right; it is possible. I know of no bank in the State of Connecticut among the large banks which has such a distorting asset, and I think Mr. Krafchik will confirm this.

THE COURT: That answers my question, that there is a definite correlation between market share of the business and total assets as reflected [1534] on the books of the bank.

THE WITNESS: I don't know if it's one of our exhibits or not, but we do have a list of all of the commercial banks in Connecticut ranked both by asset size and deposit size, and there are few, if any, exceptions or changes in rank when you use one or the other.

So it's a perfect correlation.

THE COURT: Very well. Thank you.

Go ahead, Mr. Reycraft.

BY MR. REYCRAFT:

Q Mr. Krafchik, in constructing the bar graph on the comparative financial strength of the banks in the New Haven and Bridgeport SMSA's you did not include savings banks did you?

A No, sir.

Q Did you take into consideration the fact that State National Bank in Bridgeport is a subsidiary of S&H Green Stamps?

A No, I did not.

Q If you did that, would that have changed CNB's position in Bridgeport?

A It wouldn't appear.

Q Pardon me?

[1535] A It wouldn't appear among the top four.

Q CNB would not?

A Right, that's correct.

Q Including the total State National, including S&H? Okay.

Mr. Krafchik, Dr. Murphy referred to several towns where the defendants held merger discussions with the local bank but subsequently entered de novo, as evidence that bankers' stated intentions should be given no credence and did not always correctly indicate how things turned out.

Do you have a comment on that?

A Yes, I do.

I believe that the towns referred to were such as New Milford, Wallingford, Guilford.

It seems that what the plaintiff has done with that argument is to present step one and step three. Now, step one is in fact our merger discussions or the merger discussions of any other bank with those local banks. Step three is the fact that some years later either ourselves or the First New Haven entered those towns de novo.

What is needed to complete the picture on that is step two, and that's the fact that some other Connecticut commercial bank was successful in bidding for that local bank, thereby changing it from a closed town to an open (1536] town, and therefore the circumstances under which the discussions in step one took place and the action in step three were entirely different, and it doesn't seem to suggest to me that anyone had any intentions during step one of going in de novo.

MR. CLARK: Your Honor, I move to strike that as pure speculation as to what it suggests. He has not made any reference to what he, as an officer of Connecticut National Bank, considered to be relevant in those discussions, and, in fact, he was not with the bank, as far as I know, when any of those actions took place.

I think it might have been proper for Mr. Reycraft to say that. I certainly do not think it was anything for the witness to add.

THE COURT: It will go to weight.

BY MR. REYCRAFT:

Q You have pretty thoroughly familiarized yourself with the branching and acquisition history of Connecti-

cut National Bank over the past at least ten years, have you not, Mr. Krafchik?

A Yes, sir. I have had to, in connection with this case particularly.

Q You have referred to the corporate records of the [1537] bank in some detail, have you not, in preparation of the application and your testimony here?

A Yes, sir.

Q Mr. Krafchik, Dr. Murphy stated also that Connecticut National Bank has been, I believe he said, the most prolific branching bank.

You have testified somewhat today from the maps of what that branching history has been, but do you have any comments on Dr. Murphy's remarks?

MR. CLARK: Once again I object.

THE COURT: Yes, it is quite a broad question.

MR. REYCRAFT: I will ask him another question.

[1538] Q How does the branching history of CNB compare to—compared to those of—that of C—Connecticut Bank and Trust Company?

A I don't recall specifically what time frame Doctor Murphy was referring to. I think he went back considerably further than I have gone. I have gone back to 1960, because it seems to me that that's the point in time at which we were most active in our branch expansion.

The number of branching—branch offices in the State as a whole has approximately doubled from that time until today, and I observed that, and these maps indicate that, that since 1960 the Connecticut National Bank has added 27 offices to its system. But it's only entered eight new towns.

Q How many towns are there in the State, by the way?

A 169 towns.

Q And did you look into what First National—First New Haven Bank has done in the same period?

A In the same 12 years, First New Haven has added 12 offices to its system, but only entered five new towns.

Q And what did Connecticut Bank and Trust Company do during that period in terms of branching?

A They added 42 offices to their system, and they entered 23 new towns. As I recall.

Q And what about Hartford National Bank?

[1539] A They added 36 offices and entered 15 new towns during the period.

Q All right. Mr. Krafchik, you have heard testimony concerning the standard metropolitan statistical area and the contention that it is a banking market. In your—course of your duties with the Connecticut National Bank, have you had an opportunity to form an opinion of that concept as being a relevant banking market?

MR. CLARK: Your Honor, I think he ought to clarify that he is talking about Connecticut National Bank now and no other. It's a pretty broad question.

MR. REYCRAFT: We have a lot of broad testimony about the SMSA, and I think Mr. Krafchik can answer it.

THE COURT: Well, I'll overrule the objection. Let's see what a banker in the business thinks about the SMSA's. It will go to weight, not admissibility. Go ahead.

A Well, in the process of examining exactly where our business came from in connection with preparing the application to the Comptroller, as I indicated earlier, we did actually identify on a town by town basis where all of our various types of depositors and borrowers were located.

It seems to me that the only accurate measure of your market is to—as the Court has observed, by the way—[1540] to ask: where are your customers? And we found that, for example, for all of our deposits in the bank, some 57% originated in the Bridgeport SMSA towns, and if the question is: Can I then say that the Bridgeport SMSA is our relevant banking market, I think the answer is, obviously, no.

On the other hand, if you look at the fact that some 88%, or something like that, of our total business comes from the towns in which we have offices, it seems to me that that comes a good deal closer to indicating what we think our relevant market is.

Q Now, if your office towns surround the town in

which you have no office, would you also consider that part of your banking market?

A In some cases, perhaps. In some cases, it might not be considered to be part of our primary market. I have discovered, for example, that there are six Fairfield County towns in which we do not have offices, and those six towns combined contribute less than 2% of the total business of the bank.

Now, we may surround those towns with branch offices, that's a fact, but in terms—if you put it in context of the total business that the bank is doing, if we happen to get 4/10 of 1% of our business, or 2/10 of 1% of our total business from those towns, that doesn't necessarily mean that we would approach that particular town as being part of our primary market.

[1541] Q Now, does the fact that Connecticut National Bank obtains 88% of its total business from your office towns indicate anything with respect to what the banking market might be for another bank, for example, a New York City bank?

A Could you repeat that question?

Q Right. Does the fact that Connecticut National Bank gets 88% of its total business from CNB office towns indicate anything with respect to what the market of another commercial bank might be? In other words, might you be in competition with other banks which have larger, smaller overlapping or different markets?

A Well, to the extent that that fact alone that 88% of our business comes from office towns indicates to me where our market is. That fact alone doesn't tell me who else is operating in competition with us in that market. I don't know if I understand your question correctly.

Q That's basically the question, yes.

Mr. Krafchik, in the course of your duties, do you have occasion to prepare or supervise the preparation of data submitted to state and federal—state or federal reg'—bank regulatory agencies?

A Yes, sir. Most of those reports are prepared and submitted by people working in my division.

Q And do any of the bank regulatory agencies with

which [1542] you are familiar maintain data on a SMSA basis?

A The only agency that I'm familiar with that tries to track bank market shares on an SMSA basis is the FDIC. I think Doctor Stokes referred to their methodology the other day as a halfway house. It is, indeed, a halfway house. It's a fact that there happens to be a major flaw in the approach that the FDIC uses to compile its SS—SMSA data, and that is the fact that they—they treat only deposits resident in bank offices rather than deposits generated from the geographic area.

We, for example, to give you an indication of what this flaw means, in 1970 in responding to the FDIC request as of June 30th, in following their instructions, we reported to them that our offices in the Bridgeport SMSA had 87 million dollars in IPC demand deposits, but some two months later in preparing for the application and when we did a true geographic sort of our IPC demand deposits and found out how much actually came from Bridgeport SMSA towns, the total was 77 million dollars, which means that if you look at the FDIC figures for Connecticut National Bank's market share, they are, in fact, overstated by 13%, and I can't speak for whether there would be a relative overstatement or understatement for other banks operating in the SMSA, but it suggests to me that the result is that nobody really knows what the market shares in any SMSA [1543] in the country are.

Q Does the manner in which the FDIC reports this data or has the data reported include any business for banks which do not have offices in the SMSA?

A No, their methodology would totally ignore anyone without an office physically located in the SMSA, and even to the extent there are offices there, it captures only business which happens to be placed in those offices.

Q So that a bank outside the SMSA or outside the State, even, could get substantial business from the SMSA and it would not show up in the FDIC figures, is that correct?

A Well, that's correct. If the Connecticut National Bank operated entirely in the Bridgeport SMSA, the FDIC

would say that we have no share of any other SMSA in the State. And it would be similar for any other bank not operating in any SMSA, and I think—I think the evidence in the record indicates that all of the large banks in Connecticut get some business from just about—well, from more than their immediate market, anyway, and to look at any SMSA and says: this is, indeed, the picture of the market share, to me, is unreliable.

Q Mr. Krafchik, you testified that part of your duties are—include the management of the bank's capital position, generally. Have you familiarized yourself with the profitability of branches of Connecticut National Bank?

[1544] A I have had some opportunity since I have been with the bank to at least take a look at what we have done over the last ten or 12 years with regard to de novo branches, yes.

Q And what did your investigation show?

A Well, it showed several things, really. It showed that for all of those offices that we opened de novo, for example, and that we own, our average initial investment in those offices over the 12-years period was in excess of $250,000.00, higher towards the end of the period than at the beginning due to rising construction costs and what have you.

I have also had an opportunity to examine how the profitability of those offices opened in those 12 years compared to the profitability of the entire bank, and in 1971, for example, the profitability of all of the offices opened since 1960 was some 26% less than the overall profitability of the bank in 1971. And I observed, also, since there was a considerable decline during the period in our de novo activity, I think we opened 15 offices in the period '71 to '65, and then in the second half of the '60's we opened only five, and I noticed that the profitability of the bank in terms of the return on investment increased by some 30% when our de novo branching activity was scaled down.

Q Now, do you know why, based on your familiarity with the bank's activities and the corporate records and discussion [1545] with your colleagues at the bank,

the number of de novo branch—branches opened by CNB declined in the second half of the 1960's?

A I think there are probably a variety of reasons, some of which, frankly, I can't speak for, having been with the bank only two and a half years. Those that I can speak for are such as the fact that it takes capital to open de novo branches. I think I have indicated it takes —it has taken us in the last 12 years an average of a quarter of a million dollars just to get a branch opened for business, and it is a fact that, at least in terms of national banking law, Comptroller's regulations, we have run out of capital for that purpose. And so that's one major consideration.

Another one is the—that we have perhaps paid more attention in recent years, last few years, anyway, than we used to to the true financial impact of opening these offices. Back in the late '50's, early '60's, it was like a gold rush. The name of the game was to get as many offices on the map as you could before the other guy did. Nobody had really, from what I could tell talking to officers who have been with the bank since those days, ever sat down and said: well, what is this costing us, what is it costing our shareholders in terms of lower— or less attractive performance? And I think some of the ratios I have indicated suggested to us that you just [1546] can't go on forever. Not only do you run out of funds, but at some point you have to—to balance the thing out and decide what's in the short as well as the long-run interests of your owners of your stock, and it's been my position since becoming aware of what the numbers really say that to try to—in our current financial condition—to try to attempt to continue the pace just isn't supported by the dollars we have available to us.

Q Mr. Krafchik, have you made any study of the approximate amount of business that you feel is required to support a de novo branch?

A Let me set up a few assumptions that you would have to establish to make that kind of a judgment. Let's assume that you have a typical office in terms of what it cost to set it up—$250,000.00. Let's assume that

your return on assets target would be 1%. This is something a lot of banks consider as an attractive target, it's one we have never reached, we've come close, but we've never quite reached 1%, but if that were the target, in order to return to—to achieve an attractive return on our investment in that new office, based on a 1% return on the assets that it would accumulate, the break-even point in terms of attractive return would be probably in in the area of four to five million dollars. And until it reached that size, while you might be able to say: yes, the office is in the [1547] black, you would have to admit that it is, in fact, still a drag on the overall performance of the bank. And I have observed that it's—it's taken an average of six or seven years for a new office to get to the point where it's not a drag on the performance of the bank any more.

We have some offices that are 11 or 12 years old and are still a drag. So we—our experience has been both good and bad. But it seems to me that the key factor there is not whether the—the office is simply in the black, which may average, say, three or four years, but whether the office is really doing you any good in terms of your financial objectives, what you are trying to do for your shareholders.

Q In other words, if it's making $2.00, it's in the black, but it may not be contributing to your overall performance?

A That's right.

THE COURT: Is there some regulation with respect to the use of capital to open up de novo branches? Something you said a few moments ago implied that. You said that, in your opinion, de novo branching for CNB wasn't a profitable course to follow, two, CNB doesn't have the money for de novo branching, and then I thought you said something to the effect that under the regulations we have difficulty in qualifying for de novo branching at any continued pace. Am I [1548] wrong on that?

THE WITNESS: See if I can clarify that, your Honor. I believe the Title 12 of the U.S. Code which dictates—perhaps that's a bad word—but the investment in land and building, banking premises, of a national

bank, may not exceed its capital stock account, which in our case is, I believe, $7,151,000.00, and so your total investment on your books in banking premises cannot exceed that figure, and the fact of the matter is that we had to apply to the Comptroller for permission earlier —I guess it was last year—to violate the law in that respect.

We were able to demonstrate to him that the head office facilities of the bank could no longer support the numbers of people occupying the building, we needed to expand it. But if we were to follow the law, we were not permitted to make that investment because we would have violated the ceiling in terms of our capital account, and we did, in fact, receive permission, specific permission, to do this one project, which will bring our investment in banking premises up to approximately nine million dollars, or almost two million dollars in excess of the legal limit.

THE COURT: Do I gather from what you are saying, [1549] if at the same time the executive officers of your bank decided to open de novo in an open town, they went out and saw a piece of property and got a contractor, and let's just say it came to a quarter of a million dollars, that unless they applied for some variance from the Banking Commissioner, you weren't able to do it under the law? Is that what you are telling me?

THE WITNESS: Under the present law and at the present time, we would have to apply to the Comptroller of the Currency for permission for a waiver of the law each and every time we made another investment in land and buildings, that's correct.

THE COURT: How about a long-term commitment on a lease?

THE WITNESS: On a lease—

THE COURT: How is that handled on the books?

THE WITNESS: Well of course, a lease would not—unless it were capitalized, would not show up on our statement of condition as an investment in land and building, so this would be—so this would perhaps be one means of getting around the problem.

It suggests that we would be then forced to try and

lease every new facility that we wanted to [1550] establish. And when you get into that kind of a situation, it's a whole new ballgame.

We have had—we have had several situations where we wanted to lease, but you couldn't—you couldn't get a lease at the site you wanted—you first have to pick a site and you decide this is the corner where I want to be on, this is where the action is, now you have to find someone who will either lease you an existing building at that site or build you one and lease it to you, and that's not an easy proposition. I would say it severely limits our flexibility.

BY MR. REYCRAFT:

Q How many of your current branch officers are under lease, Mr. Krafchik?

A I believe it is slightly less than half.

Q You have testified, I believe, or someone has testified earlier, that Connecticut—Connecticut National Bank is in the process of building a new head office, is that correct?

A To be specific, we are constructing additional space and totally remodeling the existing space, which for all intents and purposes hasn't been touched since the early 1900's—the building was built.

Q And did the proposed investment in that new real estate require special approval or waiver of the Comptroller [1551] of the Currency?

A Yes, it did.

Q And that has been obtained?

A That has been obtained.

Q Has the Comptroller's office at any time recently made any suggestion to Connecticut National Bank that the capital position generally needs to be improved?

A It has—let me see if I can properly identify the degree to which it has. Typically, when the Comptroller's bank examiners come in, they will at the conclusion of their examination make both unofficial and official remarks. The official remarks will go into the written report to the Comptroller. The last several times that we have been examined, the matter of our capital posi-

tion has been discussed with Mr. Hawley. It's been pointed out to him that in the opinion of the examiners, it is on the low side. They have not as yet taken the additional step of writing us up, if you will, and making it a formal criticism of the bank.

Q Have you made any investigation of how Connecticut National Bank stands among the largest Connecticut banks, the ten largest Connecticut banks, in terms of ratio of capital to assets?

A We are—we have the—of the ten largest banking organizations—commercial banking organizations in the State, [1552] Connecticut National Bank has the ninth worst capital position in terms of its resources.

Q The lowest capital in relation to its total assets?

A Right. There's only one which is slightly lower than we are.

Q And what is that ratio for Connecticut National Bank at the present time?

A It is, I believe, at the moment, about six and a half percent.

Q So that you have six and a half dollars of capital for every hundred dollars of assets, is that right?

A Correct.

Q How—have you made any—any investigation of how Connecticut National Bank compares to the other ten—to the ten largest Connecticut banks in terms of the price-earnings ratio of its stock?

A Well, our price-earnings ratio at the moment is approximately seven. It is the ninth, I believe, worst price-earnings ratio among the ten largest banks in the State.

Q So that for each dollar of your earnings, the market value a share is seven dollars, is that right?

A That's correct.

THE COURT: Explain that to me,—

MR. REYCRAFT: Yes, sir.

[1553] THE COURT: —Mr. Reycraft. What do you mean?

MR. REYCRAFT: Price-earnings ratio—say, for example, the bank reports a dollar in earnings, the stock sells for $7.00 a share.

Q What is the market price now, approximately, of your stock?

A It's in the 20, 21 range.

Q And your earnings?

A Two-fifty, two-sixty.

Q And that's the seven to one?

A Right.

Q And what is—are approximately the price-earning ratios of Hartford National Bank and Connecticut Bank and Trust Company?

A They're about ten times earnings.

Q Have you made any investigation of how Connecticut National Bank stands among the largest ten banks in the State in terms of its ratio of loans to capital?

A Yes. This is a fairly important measure, actually, it's one of the primary ones that the Comptroller's examiners use in assessing our capital position. We are, I believe—we believe—I believe we have the eighth worst, if you will, position among the top ten banking—commercial banks in the State, which is to say that relative to the—the other [1554] banks in the top ten, we have close to the highest ratio of loans to capital.

Q So that, in general, conservative—the more conservative, the larger amount of capital to the loans you have would be a better position? Would be a more conservative position?

A Would be a more conservative position, yes.

Q Mr. Krafchik, have you attempted to make any estimate of what it might cost if it should be now or at some time in the future legal to form a holding company and charter a new bank and enter the City of New Haven by the means which has been discussed in this trial?

A I have made a cursory examination of some of the major items of expense or investment—would be: For starters, we would have to comply with Connecticut banking law, which would suggest that—it doesn't suggest, it says—that for a town, for example, in excess of 50,000 thousand population, the start-up capital of the bank must be at least 1.5 million dollars.

The only recent national bank charter in the State was in Stamford, I guess within the past year, and the Comp-

troller required two million dollars of start-up capital for that one. So the one and a half million is a minimum, depending upon regulatory agency's response, it could be more, and, of course, [1555] before you even get that far, you probably got considerable legal expense to form a holding company, go through the process of applying for a de novo charter. You have got to—if you are going into a major town, you have got to have more than a candy store operation, you have got to have a major banking house favorably located downtown, I would say.

You have got to incur, it seems to me, quite heavy promotional expense to get the thing off the ground. You can't just open it and let it sit there unadvertised.

It is my judgment that you are talking easily of probably two and a half million dollars just to try to get the new venture off on its feet, and that's, of course, for one office.

Q You aren't including more than one office in that estimate?

A No, sir.

Q If you had, say, three additional offices, can you, based on your estimates of the cost of de novo office, generally tell me what that would add?

A Well, if they're in line with our experience of the last 12 years, that's another ¾ of a million dollars, so you are up over three million, well over three and a half million, probably.

THE COURT: If you are considering purchasing [1556] land and putting up a building as part of the holding company business, would that amount necessary for the land and the building still be subject to the regulation you pointed out to me about seven and a half million of CNB's assets?

MR. REYCRAFT: In other words, would you need a waiver from the Comptroller to do what you are just suggesting?

THE COURT: Yes, I'm getting around to that question.

THE WITNESS: I would say not. I would say that the Comptroller would look at the de novo bank's own capital position. Let's say, for example, the Comptrol-

ler said this new bank must have two million dollars of its own capital as a separate business enterprise.

THE COURT: Well, wouldn't 25% of it have to come from CNB? Maybe before this trial is over someone better explain to me exactly how a holding—

MR. REYCRAFT: I think I know where that came from, your Honor, the Federal Bank Holding Company Act requires that the Federal Reserve Board approve acquisition, anytime a holding company acquires 25% or more of the stock of a bank—now, that's 25% up to a hundred percent—the assumption we're discussing [1557] here is that the CNB holding company would have a hundred percent of the stock of the newly chartered bank in New Haven, and all of the capital would have to be contributed by CNB to that newly formed bank.

THE COURT: All right. Now, where am I illogical when I say if CNB has to make this contribution, part of the contributions for land and buildings, how can you avoid the Comptroller coming in and saying, "Hold on, it's a left-handed way of getting around the regulation and I will allow it or I may not"? That's was my question.

MR. REYCRAFT: Well, it would come out of your capital, the million and a half, the two and a half million would come out of your capital.

THE WITNESS: Well, never having tried it, I don't know what would happen, but it is a fact that if we're going to have control over this newly chartered bank, it is our resources that have to go into it. Now, that only weakens our position further, and I suppose it is entirely possible, if not profitable—or probable, that the Comptroller would have quite a bit to say about what we were doing with our resources.

He might say that, "You are stretched thin already, how can you expect me to allow you to do this which [1558] involves another two and a half or three million dollars?"

THE COURT: This is why I say: where is my logic faulty if the Comptroller is concerned about CNB remodeling a building or opening a de novo office for $250-

000.00, is he going to sit tight while the same assets are going into a holding company at two and a half million?

MR. REYCRAFT: He has to approve the whole transaction, including the taking of the capital out of CNB, the chartering of the new bank if it's a national bank, and I don't think there's anything illogical at all about your Honor's comment. I think he'd have problems with it.

THE COURT: I won't draw that conclusion. I mean that's something for later, I just want to make sure there's nothing in the statute that says the Comptroller cannot, or does not, have supervisory powers of the holding companies—and how it—how it's composed and what assets can be used. In other words, it is subject to regulatory—a regulatory agency?

MR. REYCRAFT: It requires approval not only of the Comptroller of the Currency, because Connecticut National Bank is a national bank, for that reason, his [1559] approval for the newly chartered bank as a national bank, and the approval of the Federal Reserve Board to form the holding company and acquire both CNB and the new bank.

THE COURT: And we learned earlier the Department of Justice can come into this?

MR. REYCRAFT: They can come into this. They can come in also, your Honor—I think Mr. Clark will say, with a newly chartered bank, they wouldn't be concerned about it.

THE COURT: But there's an awful lot of regulations?

MR. REYCRAFT: There certainly is, there certainly is.

THE COURT: All right. Go ahead.

BY MR. REYCRAFT:

Q Mr. Krafchik, you had been testifying hypothetically about the formation of such a holding company, a newly chartered bank, is this—as chief financial officer of Connecticut National Bank—does this suggest something that you think is feasible?

A Well, my job, of course, is to assess the financial

impact of the whole company, if you will, and to suggest what I think that impact will be, whether I think it is an attractive [1560] investment vis-a-vis other investments we might make if we had the capital, and I would have to say it's probably one of the most least attractive in terms of not only initial impact of an investment of that size in starting something from scratch, in the face of giant competitors, but I probably couldn't even begin to assess how many years down the road it might even begin to look halfway decent in terms of an attractive investment.

It just doesn't—you know, it doesn't add up when you look at the numbers.

Q You haven't gotten to the point, have you, of trying to make any financial projections as to what the earnings of such an operation might be and when it might break even or anything of that sort of thing?

A No, I haven't.

Q Now, a lot of our testimony and our questions have been more or less on the assumption that the only thing the bank can do with its capital is to open de novo branches. Is one of your jobs to see what other—what areas there are in which the bank can deploy its capital profitably?

A That would be part of the overall charge given to me. I would have to admit that I haven't spent a great deal of time in that area, primarily because we don't happen to be capital rich. If we were capital rich, then we'd have to scramble to see [1561] what investments there were available to us to get that capital working. However since we are rather thinly capitalized there hasn't been a great deal of attention paid to just what all the —alternatives are.

I am generally aware of some of the other alternatives, such as leasing companies, finance companies, factoring companies, data processing operations, related operations, there's a whole laundry list, to quote what the Federal Reserve has done for holding companies, there's a whole list of permitted bank related activities. Many of which, as I understand, are open to national banks without actually becoming holding company. But in any

case, I would view virtually all of these as potentially more attractive by a considerable extent to going in tampering with this de novo bank avenue.

Q Are you aware of any Connecticut banks which have opened offices of any kind in New York City?

A Yes, the two Hartford banks have opened securities clearing corporations, they've opened international banking subsidiaries, they have acquired finance companies located in New York City. Those are the major kinds of—

Q Have any of them opened major trust offices in New York City?

A Yes, I believe—I don't recall which one it was, but in the last year or so one of them has opened a limited power [1562] trust company in New York City. That's just another activity they've gone into right in New York.

[1563] BY MR. REYCRAFT:

Q Is this somthing that the consolidated bank would consider?

A Well, I know that Mr. Hawley and Mr. Chadwick have it in mind to try and do something in the international area. I obviously don't know whether that would involve a move into New York City. It could at some point, if it was determined that one had to be there. I guess if—if—if the record of the Hartford banks suggests that they felt they had to be there, we might find ourselves reaching the same conclusion at some point, but I'm not aware of any, you know, discussions at this point that would indicate any—

Q All right.

Mr. Krafchik, does the price-earnings ratio of a bank have anything to do with its ability to raise capital through the sale of common stock?

A Well, it has quite a bit to do with it. In fact, that's the whole ballgame.

The higher your price-earnings ratio, the more dollars you will raise per share of stock that you are going to sell. If you are selling a hundred thousand shares in the marketplace to raise new equity capital and your price-earnings ratio is seven, you must in fact respond to that

in pricing the issue, and, in fact, you usually have to price it [1564] something below the market in order to move it.

But let's assume that you can market the stock at seven. All right, you will raise $700,000. If your price-earnings ratio were ten, such as it is with the Hartford banks, you would raise a million dollars by selling that hundred thousand shares of stock.

The same kind of impact is seen if you are talking acquisition with another bank.

Q Would you explain that a little bit?

A If you are talking to a bank somewhere about maybe acquiring them, one of the first things he wants to know is what's the market value of your stock, you know, what's the value of the paper you want to give me and my shareholders in exchange for my bank. And when he sees that it's seven times earnings, he's going to want a little bit more paper than he might otherwise want.

This, of course, raises the effective price and raises the dilution which your current shareholders may suffer in the transaction.

Q Are you familiar, Mr. Krafchik, with the acquistion by Connecticut National Bank of Atlantic National Bank in Stamford?

A Yes, I am. It—the financial arrangement was made before I joined the bank, but the transaction was [1565] concluded about a month after I joined the bank back in 1970, and I am familiar with what those terms were.

Q What were they, approximately?

A Well, in terms of shares, we acquired 70,000 Atlantic National shares for 140,000 of our shares. The book value of the bank we acquired was one million one, and the book value of the stock that we had to turn over in exchange was two million three, so that on a book value basis, dollar for dollar, there was a million two of premium paid for the bank.

It caused almost a 10 percent dilution in our earnings per share to acquire that bank in 1970, and as of the moment we haven't made it up yet.

Q Approximately what size was the Atlantic National Bank at the time it was acquired?

A Its total assets were in the neighborhood of $19,000,000.

Q Could you make many of those kinds of acquisitions and maintain support of your current shareholders?

A As CNB right now—I don't think we can make one right now.

Q Why is that?

A Well, we can't—we just can't afford the dilution. You can only do so many of these at so frequent [1566] an interval, and, you know if I place myself in a position of a shareholder and I see my earnings going—earnings per share, which affects the market value of my investment, what its worth, going backwards at 10 or 15 percent a year, it seems to me I'm going to raise a little—

Q Cain?

A —hell at shareholders meetings.

But, seriously, it—when you are involved in dilution of those proportions and there's no such thing as—as a small local bank that's going to trade you dollar for dollar, there are only so many of those that you could do.

The interesting—I think one of the benefits of the proposed consolidation for both groups of shareholders is that there's no dilution on either side, because we're doing it as—we're trying to do it as a true consolidation, in which both groups of shareholders come out of the transaction with exactly the value that they went into it with. So that nobody gets hurt.

Q In terms of book value?

A That's right.

Q Have you formed any opinion as to whether the proposed consolidation would be likely to have an effect on the price-earnings ratio of your stock, combined stock?

A I obviously can't say what it will do. It's my [1567] judgment that it will increase. Hopefully we would be able to get up on the level that the Hartford National, CBT and Union Trust are, which is ten. This, of course, would give us a great deal more flexibility as we went on down the road.

Q Have you observed any relationship between the price-earnings ratio of Union Trust stock now and the price-earnings ratio of the Fairfield County Trust before its merger with Union and New Haven Trust Company?

MR. CLARK: I object to that. I do not see it has any relevance.

THE COURT: Will you read the question back.

(The pending question was read by the reporter as above recorded.)

THE COURT: Is that a fact?

MR. REYCRAFT: Yes, sir. I mean he has checked out—

MR. CLARK: My objection, your Honor, was to relevance. I think we have limited our discussion here to the question of this—

THE COURT: He expressed the opinion he thought there would be a rise, a beneficial rise, and I suppose one of the factors is that in other mergers there has been a rise.

[1568] Is that kind of what you are driving at, Mr. Reycraft?

MR. REYCRAFT: Yes, that is exactly it.

THE COURT: Mr. Chadwick said something along the same lines yesterday, didn't he?

MR. REYCRAFT: Yes, sir.

THE COURT: If I recall, he said something along the same lines.

MR. REYCRAFT: Yes, sir.

THE COURT: You know, I just assume that the banks are not doing this because they have nothing else to do, that one of the things that concerns them is what their shareholders are going to say about it, and one of the first things a shareholder says is "How does it affect me? Is it going to put dollars in my pocket?" And somebody is going to have to say yes, sure.

All right. I will sustain the objection only because we might get off onto an entirely new field of the Union merger and I do not want to do that. Let's restrict it to this merger.

Why don't I give the court reporter a rest at this time.

We will have a five-or ten-minute recess.

[1569] (Recess)

BY MR. REYCRAFT:

Q Mr. Krafchik, have you given any consideration to the amount of capital that might be obtained by CNB through the sale of the branches which the banks have offered to divest?

A Well, we're talking about six offices. I can recall specifically that our contract on our Milford office is—our Milford office will generate 350,000. I don't recall offhand the other two that are already under contract or what—or what I care to speculate as to what the other three might bring, but, based on the one for 350,000, I think it's entirely possible that it would be less than a million and a half that would be freed up out of the divestiture and that would be funds that we could put to work somewhere else.

THE COURT: We ought to keep the divestitures separate, but I am still not sure how we are going to handle them later; so we ought to talk about the three that are under contract and three that you are willing to throw into the pot.

MR. REYCRAFT: Yes, sir.

THE COURT: Just keep them separate. If at some other time the difference between what is [1570] under contract and what is, so to speak, a compromise might be relevant—do you have that in mind? For example, you said of the six. Can you answer the question first with respect to the three under contract and the other three that are not under contract?

For example, Milford; is that one of those under contract?

THE WITNESS: Milford is under contract. It would generate two or three hundred thousand dollars.

THE COURT: And the million-and-a-half figure would be all six?

THE WITNESS: That might be a guess as to all six, at least a million and a half, right.

THE COURT: What is your best estimate for the three under contract, if you have an estimate?

THE WITNESS: That would be a case, your Honor, of knowing the exact figures on the other two, and I am afraid I can't recall them at the moment.

THE COURT: All right, fair enough.

Go ahead.

[1571] BY MR. REYCRAFT:

Q Mr. Krafchik, there has been testimony by officers of the two banks that they would use best efforts if it was legally feasible to do so to enter Hartford.

Would the sale of these branches facilitate the availability of capital for those purposes?

A Yes, it would.

Q You testified earlier, Mr. Krafchik, about the return on assets by CNB.

Can you tell me what is the over-all rate of return on assets which CNB is currently earning?

A Nine-tenths of one percent.

Q So for every million dollars of assets, you earn what, $9,000?

A Correct.

Q Do you know how that compares to other banks in the State of Connecticut, first all banks in Connecticut as a group?

A All banks as a group are right about in that same range. There are some isolated cases where one or two might be significantly above or below, but, as I recall, the average for the larger ones, anyway, is right about in that eight-tenths to nine-tenths of one percent area.

Q How does that compare to banks nationwide?

[1572] A It's fairly typical.

Q Of those few banks in the State of Connecticut which you have indicated might be somewhat above the average, do you know who they are?

A I know two specifically. Do you want the names?

Q Yes, sir.

A Two that I'm aware of, as I happen to know which banks are doing particularly well, are the Union Trust Company and the Putnam Trust Company down in Greenwich.

Q How big is the Putnam Trust Company?

A A bit in excess of a hundred million dollars, I believe. Yes, 116 million in assets.

Q There has been testimony in this case from some of the economists that high market shares and high concentration ratio tends to produce abnormally high profits.

How does the performance of Connecticut National Bank in its rate of return on assets bear upon that suggestion?

A If I understand the question to be how does our performance relate to the typical—

Q Let me ask it differently.

It has been alleged by the government that CNB has a high market share in the Bridgeport SMSA, which is contended to be a highly concentrated market, and there has been [1573] testimony by at least Dr. Murphy that in a concentrated market the firms in that market tend to earn abnormally high profits.

MR. CLARK: I object, your Honor. There has been no such testimony.

THE COURT: I do not pretend to recollect all the testimony that has been going on for weeks, but I thought the government's contention was correct as you stated —I thought you were correct in citing the government's contention with respect to the former aspect of your question. With respect to the latter aspect, I think it was your expert that correlated concentration with abnormal profits.

MR. CLARK: It was our expert, your Honor, who correlated concentration with pricing—

THE COURT: Right.

MR. CLARK: —and it was his testimony that pricing is a much more adequate, much more reliable index of performance, because profits are subject to a lot of variations.

THE COURT: Yes.

MR. REYCRAFT: Dr. Murphy testified on cross-examination that economists use high profits as a [1574] proxy for an absence of competition.

MR. CLARK: Only when the pricing is not available.

THE COURT: We can get around this whole problem, because the transcript will be clear—and my recol-

lection could certainly be faulty—by just saying there has been testimony, without saying by whom.

MR. REYCRAFT: Okay.

BY MR. REYCRAFT:

Q Mr. Krafchik, assuming that there has been some testimony that high concentration ratios are associated with abnormally high profits, does the experience of Connecticut National Bank in the rate of return it is able to realize on its investment indicate that?

A No, sir.

Q Why are you not able to get a higher return on your assets than you get?

A That's a very complicated question.

Q Why don't you raise your prices?

A Well, we'd probable suffer a multiple decline in our share of the business if we did that. I think that competition being what it is in the marketplace, I can't think of any instances in which any competitor has tried to [1575] improve his margins by moving away from the market, if you will, with his pricing structure.

It's—as I've indicated, when you are talking about an industry whose profit margins are less than one percent on the assets at work, it is obviously a very low profit margin industry, and this suggests to me that there is a lot of—lot of the reverse going on. Rather than people jacking up their prices, you are always seeing how prices are being cut; for example, demand deposit service charges.

THE COURT: Okay. This leads me to this question—an opportune time to ask it:

If you wanted to raise prices, putting aside for the moment competition and the price wars that may go on, name the categories where a bank could raise prices, subject only to federal regulation. One would be what, the one you just mentioned?

THE WITNESS: Service charges on accounts would be a price that could be raised.

THE COURT: What other?

THE WITNESS: Interest rates on loans would be a price that could be raised.

THE COURT: Is there any ceiling on that? By law?

[1576] THE WITNESS: Well, there'd be a—there'd be a law on the ceiling on the charge card, for example, but certainly on any—and there may be a few others on loans to individuals; I'm not quite sure. But, of course, on any business loans there are none.

THE COURT: Go ahead.

THE WITNESS: Any financial service, in fact, that the bank provides, from safe deposit box up to trust services, have a price, either explicit or implicit.

On the reverse side, you could, in effect, be raising your prices by lowering interest rates that you pay for source funds.

THE COURT: All right.

THE WITNESS: As the record already indicates, early in '71, I believe it was, we found that it was economically appropriate in terms of our earnings outlook to reduce the interest rate we paid on savings deposits from 4½ to 4. This is a move we felt we had to make because the price we could charge on the other side to the customer to borrow the money had dropped considerably.

THE COURT: Okay.

[1577] THE WITNESS: And we obviously couldn't pay more than we charged.

So that, if you will, it's sort of charging a higher price to the guy who wants to keep his savings account with us, despite the fact that we reduced the rate.

THE COURT: What other categories come to mind?

THE WITNESS: Well, we do some data processing services. There is a price for that.

THE COURT: Is that to a special clientele?

THE WITNESS: Well, you might be doing an automated payroll for a corporation for an agreed-upon price, which tends to be renegotiated frequently. It's really the whole range of financial services that we provide.

I would say that the tendency in the industry over the last five or ten years has been to give a lot less away and to attach a fee, a specific identifiable price, if you will, to more and more of its services.

THE COURT: I recognize that there are many serv-

ices a bank performs for its customers that are subject to a charge if the bank wishes; for [1578] example, guaranteeing signatures. It is as simple as that.

THE WITNESS: Certifying a check.

THE COURT: That is right, something like that.

But I was thinking of the categories where, if you were instructed to list the obvious areas that are subject to service charges or price rises—which ones are the obvious ones, not charging because somebody walks in the door and wants a signature notarized?

THE WITNESS: Well, let's put aside immediately interest rates on loans and deposits, because they're pretty much the effect, the cause being market conditions in general, economic conditions, the going price of money, which affects, of course, as testimony indicates, what we can charge for our loans, what we can pay for our source funds.

Once you get beyond that you are talking about all of the satellite services that a bank will provide. It provides its customers with bank checks, money orders, safe deposit boxes, all of these ancillary services that kind of round out [1579] the picture of services that are being provided to the customer, and these all usually have a service charge attached to them; and those service charges, demand deposit service charges being the major ones, would be the ones I think you have in mind.

THE COURT: Go ahead, Mr. Reycraft.

BY MR. REYCRAFT:

Q Mr. Krafchik, why don't you raise your prices on commercial and industrial loans, for example, and improve your return on assets?

A Well, we wouldn't be competitive in the market if we raised our rates.

As I recall, something in the neighborhood of 45 million dollars of our 75 million commercial and industrial loans—let me restate that.

We have commitments in terms of lines of credit of approximately 45 million dollars. The extent to which they're actually used at any point in time may—is usually somewhat less, but there's a tremendous propor-

tion of that portfolio which is on loan or committed to loaned to corporations of a stature such that they have access to national money markets—New York, Chicago —even international markets—and they're hardly going to borrow the money from us unless we're right in there with what the [1580] market is doing.

So, if we're to raise our price, we aren't going to get into loans and the ones that are on the books are likely to leave.

Q Why don't you raise your mortgage interest rates?

A Be exactly the same reason.

There are innumerable competitors in the mortgage market, and today's consumer does in fact shop around. Anyone in the market for a mortgage will typically go to several different institutions and different types of institutions to get a rate quote, and if we're a quarter over the market we don't have much of a chance of getting the business.

So there's no insulation from what the other competitors are doing in the market. If there were insulation, we might well be able to afford—or be able to get away, if you will, with improving our profitability by raising prices.

Q Have you seen any evidence at all of any kind of isolation of the Bridgeport SMSA from pricing competition from outside the SMSA?

A I can't think of any area which would fit that description.

Q Mr. Krafchik, just another couple of brief [1581] questions.

You have testified about the acquisition of Atlantic National Bank in Stamford.

Has there been any problem in retaining the branches which were part of that acquired bank?

A There is—there is a problem with one of those offices. I believe the sequence of events was that shortly before we got involved with Atlantic National they did in fact apply for a—what was their third branch, making a total of four offices. Subsequent to their applying for that office we engaged in merger discussions with them, which were successful.

We did acquire the bank, but a local bank in Stamford and another—another, second bank joined in and brought suit against us over our right to retain that office, that fourth office, after our merger was consummated.

Q What are the names of the two banks who are litigating against you?

THE COURT: I thought I approved that. Didn't they litigate that before me?

MR. REYCRAFT: I do not know, your Honor.

THE WITNESS: I believe they did, your Honor, but my understanding is it's under appeal.

THE COURT: Oh, well.

[1582] (Laughter)

THE COURT: Have faith.

In other words, the Appellate Court has not ruled on that, and so it is still subject to a problem in the future?

THE WITNESS: That's my understanding, yes.

THE COURT: All right.

THE WITNESS: That's the latest I've heard on it. I don't know exactly where it stands at the moment, but I understand it is under appeal.

MR. CLARK: Your Honor, I think we ought to find out whether that is the case.

I suppose Mr. Stone is not here.

THE COURT: I know it was challenged.

MR. BELL: It is on appeal.

THE COURT: The merger was challenged and the branch bank application was approved and challenged. I overruled all objections, but it could be on appeal.

MR. BELL: That is correct. My understanding is it is now pending on appeal in the Second Circuit, your Honor.

MR. REYCRAFT: That is all I have.

MR. BELL: It has not been argued.

[1583] THE COURT: All right.

MR. McENERNEY: I have nothing, your Honor.

CROSS-EXAMINATION

BY MR. CLARK:

Q Mr. Krafchik, I think it is true, isn't it, that you have not, since coming with Connecticut National Bank, been involved in the process of deciding on whether or where to open branch offices?

A No. In terms of looking for locations, you mean, and negotiating with people to buy land and that sort of thing?

Q Right.

A No, sir.

Q You have never been involved in a decision in any way to open a branch office; is that correct?

A That is correct.

Q You are not aware, then, from your personal experience or knowledge, what factors Connecticut National Bank considers when it ponders the possibility of opening a new office?

A Not except in a casual, secondhand manner. No, I'm not aware of what the litany actually is or what process the marketing people actually go through or what documents they work with, no.

[1584] Q Although you did much of the work relating to the merger application, you have never worked on a branch application, have you?

A No, sir.

Q Since coming with the bank, then, your duties have been involved in long-range planning? Is that the proper description of your job?

A Long and short, yes, in terms of the short being are we making any money today, this year, the long range being how are we going to make it five years and ten years down the road. Yes.

Q What has taken up most of your time in this area since you came with the bank?

A I've said many times around the bank that beginning with a point probably about three months after I joined the bank I've spent 60 to 70 percent of my time working on the business before us here.

Q This consolidation? Is that correct?

A Right.

Q So you have not considered, either from long run or a short run, possible other means of expansion outside this consolidation and outside of your testimony, the testimony which you gave today, of course?

A In terms of devoting time to an analysis of [1585] specific alternatives, avenues of approach down the road, no.

Q You have not considered outside of this consolidation means of increasing your bank's capital, have you?

A Well, I know what the means that are traditionally available are, of course. I haven't, since we're not obligated at the moment or being asked or requested by the Comptroller to do something about it today—I have formulated no plans as to how we might approach that.

Q What are some of the means that can be used to increase capital?

A Sell more stock, the most common; go into the debt market for long-term debt. Those are really basically what you are talking about, either debt or equity capital.

Q And, of course, retaining earnings?

A Retaining earnings is obviously a resource—a source of capital, that's correct.

Q When was the last time your bank, CNB, sold additional capital stock?

A 1964.

Q How much? Do you know whether it was a substantial amount?

A It was not a large sale. It was a—as I recall, something like 200,000 shares. It was a one-for-five [1586] rights offering to shareholders.

Q I assume the bank had no real difficulty in selling the stock?

A No, I don't recall that it did. It was fully subscribed, yes.

Q Within the shareholders, themselves?

A Yes.

Q From looking at your balance sheet here, it appears that you have no debt equity; is that correct?

A Debt capital, that's right.

THE COURT: What is that?

Q I think we should explain that.

THE COURT: What is debt capital?

THE WITNESS: Long-term debt.

THE COURT: Long-term debt? What is that?

THE WITNESS: Would be your debt capital, and your stockholders' equity would be your equity capital.

THE COURT: A little more slowly. Explain that again.

THE WITNESS: At the moment our entire capital position consists of the proceeds of the stock we have sold to shareholders and earnings we've retained since going into business.

[1587] The other form of capital would be to go into the debt markets and borrow it on a long-term basis, issuing bonds or long-term notes to institutional investors and raising capital through that vehicle, and, of course, paying interest.

THE COURT: Could you give me a concrete example? Pick a bond customer, say X municipality. How would it work? What would you do?

THE WITNESS: What we would do to raise—well, we'd have to go into the marketplace and seek out institutional investors. Insurance companies are a standard source, for example. If we wanted to place the instrument privately, we could go specifically to one or two or ever how many private investors, institutions, and negotiate a sale of our debt notes to them in exchange for the capital; or we could seek to publicly issue the debt through an underwriting on Wall Street, such as any industrial firm does.

THE COURT: Oh, it is your debt?

THE WITNESS: That's correct. We are going into debt.

[1588] THE COURT: I am sorry, I completely misunderstood. I should maybe know a little more about economics than I do. I though you meant going out and—well, I'd better not tell you what I thought. But I do understand now what you mean.

My thought, anyway, made me conclude there is no way you can increase capital with what I thought you

meant by going into the debt market. You mean you become the debtor?

THE WITNESS: That's correct.

THE COURT: Okay, go ahead.

THE WITNESS: We're doing the borrowing.

BY MR. CLARK:

Q This is a relatively common way that banks increase capital?

A I'd say in the last decade it has earned the label reasonably common, yes.

Q It is done by small banks as well as large banks?

A Lately it has been done more and more by smaller banks. It—I guess five or ten years ago you never saw a small bank try it. I've observed that it has been done successfully with some frequency lately, yes.

[1589] Q Apparently Connecticut National, however, has not considered this alternative, as far as you know?

A No, sir. Of course, it comes back to one of your earlier questions, when you come to the threshold of having to do something, it is at that point that you must make a decision as to what vehicle to choose, and since we haven't in recent years gone to the market for any kind of capital, we obviously haven't considered whether that vehicle might be debt as opposed to equity.

Q And that's because you haven't felt the need to go to the market, am I correct?

A Based on our current situation, that's correct.

Q And it is also because the Comptroller of the Currency to date has not yet told you that he recommends that you do so, is that also correct?

A He has not made it a formal rather than informal part of his remarks.

Q I think we should also clarify the Comptroller's regulations relating to the proportion of capital which a bank can tie up, if you will, in land and buildings.

Now correct me if I'm wrong. I think his regulation says that a bank may employ up to 50% of capital —capital stock in land and buildings, is that right?

A It's not my understanding.

Q What is your understanding?

[1590] A My understanding is that it is—it is 100% of the capital stock account.

Q Yes, you are right.

A Without any—

Q Right.

A —need to correspond, if you will, and seek permission to go any further than that.

Q Right. Okay. So your capital stock account as of the end of the year 1971 was a little over seven million, right?

A Right.

Q So if your investment land and building is to exceed than, then by regulation you must apply to the Comptroller of the Currency for permission to do that, is that correct?

A That's correct.

Q And you did that when you made your decision to expand your head office and he approved your application, didn't he?

A That's correct.

Q Do you know on what grounds—why he approved it if it exceeded this hundred percent of capital stock?

A I recall that he asked us, of course, to explain to him what we were doing and why we were doing it, and, of course, the answer there was that we were—we felt the need to expand our headquarters facilities to support the bank and get us back on an efficient level which consultants had advised us [1591] had slipped considerably in the last five or ten years, and he recognized we obviously couldn't continue on into the future in the space limitations that we had at the time.

Q Doesn't he also have a policy, if you will, or regulation that he will normally approve such applications where the investment will not exceed 50% of all capital accounts?

A That's right. The regional administrator, who is, in fact, the party that we applied to, Mr. Donovan in Boston, has the authority to act on behalf of the Comptroller and approve, if he wishes, any application which would result in the bank having less than 50% of its total

capital, which for ourselves would be something like 13 million.

Q All right. Your total capital, then, is a little over 27 million, and half of that is?

A Half of that would be the limit the regional administrator—would be his limit. Beyond that, he couldn't say: yes, this doesn't—this doesn't mean he isn't still looking at it very hard.

Q But beyond the—all right. So your total investment after you—after you have completed your new building will be around nine, is that right?

A Yes.

Q And you will still have that clearance, then, between nine and 13 and a half, as far as the regional [1592] comptroller's concerned, right?

A In terms of what he's permitted to do, yes.

Q Right.

THE COURT: Do I understand he can waive up to 13 and a half million, but if that's the limit—

THE WITNESS: He has authority to act and say: yes, up until it is 50% of your total equity capital, which in our case is 13 million. He doesn't necessarily have to say: yes, but he has the authority himself at the regional office to make that commitment.

THE COURT: So when you got the waiver that you have already obtained, that was from the regional man, Mr. Donovan—

THE WITNESS: That's correct.

THE COURT: —rather than the Comptroller himself?

THE WITNESS: Correct, your Honor.

THE COURT: Go ahead.

What do we know about that? Is that almost an automatic waiver?

MR. CLARK: I believe it is, your Honor, I'm sure that we'll hear from Mr. Donovan himself on that, so maybe it's premature, and, in fact, I have an exhibit which I'll offer after lunch which shows that it [1593] is—that the regulation says that it will be normally approved up to this 50% level, and that in the past—I

forget—five or six years, there have been no denials in the State of Connecticut, I believe.

THE COURT: And I think the record does disclose this, but let me just make it clear in my mind, you are about nine million now, is that where you are?

THE WITNESS: We will be on completion of the renovation, yes.

THE COURT: You are committed—

THE WITNESS: That's correct.

THE COURT: —on the renovation?

THE WITNESS: That's on the contract.

THE COURT: That's on the contract?

THE WITNESS: Yes.

THE COURT: All right. Go ahead.

BY MR. CLARK:

Q You spoke about branch profitability, Mr. Krafchik, have you been involved in the nuts and bolts of computing branch profitability?

A Do I do it—the actual computations—

Q Yes.

A —from A to Z myself?

[1594] Q Yes.

A No. The people who do the work for me.

Q All right. Do you know how they do it? I mean, are you generally familiar?

A Generally familiar with what the process is, yes.

Q Have you made any changes in the process since you came with the bank?

A I probably have. I have suggested changes in a lot of areas, and I am sure that one hasn't escaped my microscope.

Q But you can't recall—

A If you ask me to recall, you know, specific methods that I may have changed, I may have had a better recollection when you took my deposition than I do now, as a matter of fact, but I'm sure there probably are some.

Q It is a pretty complicated matter, isn't it, because of the allocation of some expenses which aren't directly incurred at the branch? Can you explain what that involves?

A Well, the most commonly accepted philosophical approach to branch earnings today is that you judge it by those income and expense items over which it has direct control, or its direct contribution to earnings, and you somehow identify that separately from—let's call it the net bottom line income figure, which takes into account that that branch office couldn't possibly operate in and of itself without support services from [1595] the headquarters of the bank, if you will. It isn't self-sufficient and there are expenses incurred by the mother bank in support of the activities of that office.

The only difference—those are both expenses which are, in fact, incurred on behalf of the branch and its business. The only difference in them is one—it's one of approaching it in terms of measuring the manager, really. Let's look first over what he controls directly and not penalize him for expenses which are the result of decisions made by someone at the main office. For example, equipment. If the manager picks his own equipment and enters the purchase order and buys it, he was directly responsible for the decision and the expense, it is a direct expense. You know, the business development expense he incurs, all of these things that he does right in his office, as well as the loans he makes, are decisions he has made, those are his direct income and expense.

But if someone at the main office made a decision to change something in the office to better serve the customers—we needed another drive-in, and, you know, the property had to be enlarged we needed more parking and this kind of thing—it may or it may not be shown on the direct side of the balance—or the profit and loss statement, or it may be on the indirect side.

The net result, however, is the same. All you are [1596] doing is trying to identify more specifically the manager's performance. But all of the expenses are, in fact, incurred in support of the business going on there.

Q I think you perhaps tried to clarify that, there are direct expenses which the branch incurs?

A Easily identified, they incur right on the location.

Q Manager's salary, the clerical—

A The salaries, the light, the heat.
Q Lease expense, whether it's leased?
A Right.
Q Or some capital cost, I assume?
A Right.
Q There are other expenses which may be indirect, well, such as your salary, I assume, is parceled out in some respect to the branches in some way, isn't it?
A That's right.
Q And Mr. Hawley's?
A That's right.
Q Other expenses which perhaps don't occur at that branch but obviously affect it, is that correct?
A Well, they're incurred, you know—
Q By the bank?
A By the bank.
Q Right.
[1597] A And, of course, one of the reasons they're incurred is to support what's going on in those offices, those are the points of sale.
Q Yes. The allocation of those expenses is not—is somewhat inprecise, I mean it is not really possible to tell how much of your services, for example, are benefiting the New Milford office, is that right?
A There's no magic. Unless a bank can actually track every piece of paper flowing through the organization.
Q So the bank must—
A Banks are very paper intensive, and I only know of a few banks—and these are basically in New York, Chicago—who have developed systems which, in fact, enable them to do that very precisely. We have—we have initiated some programs which are taking us in that direction, but at the moment to answer the question, it is an inexact science, yes.
Q So you simply must arrive at some sort of formula which you use to allocate these?
A You do the best you can, you listen to the branch manager's argument, you listen to the department head's argument, and you try to decide who should eat what percentage of the cost, that's right.

Q But you are also familiar, aren't you, with your own bank's records which show that virtually every branch which [1598] you have opened has been profitable or in the black according to your accounting procedures within three years?

A That's approximately correct. There have been some which reached profitability, for example, let's say, in three years, I think of one specifically, in Stratford, but did so in a temporary kind of a trailer thing. Okay. And it reached profitability on that basis, but that was kind of a—that was a pretty modest investment. The business grew, the branch prospered, we had to replace that with a permanent facility, the vault, the parking and everything else, and that branch—that branch is now back in the red, so that some of these reach profitability in three years, but they're not on the basis of a full blown investment and others, of course, are on the basis of a full—full shot the first time around.

Q But I assume that was the bank's opinion that such an investment would—would be a profitable one for the bank?

A I sure hope so, yeah.

Q And, in fact, can you identify any branches of your bank which the management feels were not wise investment decisions?

A There are offices, and some of them go back a good number of years, which have never returned us the kind of profit on our investment which we hope to achieve for the whole bank, and as I said earlier, from my point of view, this is what matters. Being in the black or being in the red doesn't mean a thing if [1599] the branch is, in fact, a drag on the performance of the bank, and we do have offices, it is my recollection, that never have in their history gotten to the point where they're beginning to carry their own weight.

Q You mean where they're beginning to earn on—

A A return on investment that we set up as a target for the bank, and, of course, obviously, for any unit of the bank.

Q Well, how do you set that target up, this is—don't you simply take the—the return which the bank is presently enjoying overall?

A That's fine if it's an attractive return. If it's not an attractive return, you are going to set your sights somewhat higher, it seems to me.

Q Well, I thought you testified that that is how you—your 1%, as I recall, was what—what the bank is presently doing overall?

A What I said, I believe, was that based on what I have seen in the way of industry performance, industry-wide performance, 1% return on assets is an attractive operating performance. There aren't that many banks who achieve it, and I do know, particularly from my consulting experience when I was in New York, that it happens to be a fairly common target for a lot of banks, when they feel—when they've reached 1% return on assets, they think they're doing pretty well.

[1600] And if I'm going to say to Mr. Hawley what I think the profitability of our branches are, if they're returning 6/10 of 1% of return on their assets, I'm going to say to him they're not doing very well, in fact, they're not helping.

THE COURT: On the other hand—I think it is relevant—on the other hand, you can't just look at everything in dollars and cents. Executive officers of a bank may have subject—for example, take an inner city area, they may say, "Sure, we're making point six, but we think we should be there, we think it is good for the city, the city wants us there, it is good for the community, we have a civic duty to the city to be there," so aren't there other considerations where you just can't look at the dollar and say: well, this is a drag, or we shouldn't be there? They may be performing a service to the community that is appreciated by the community, by the fathers of the city, that really doesn't reflect on the books, but is very important to the bank's reputation for being a leader in going into an area where the return isn't so much, but it has benefits to their reputation and other factors that have to be considered?

THE WITNESS: Well, if I may, your Honor, I'll [1601] answer it this way: You are, of course, correct, we do, in fact, have offices in areas which by the numbers game alone are unattractive, but we feel in order to serve all the elements of the community we have to be there, and we have not moved those offices despite the fact that they are in terms of profits unattractive.

THE COURT: Yes.

THE WITNESS: In short, the answer is: yes.

THE COURT: There are so many intangibles here that the numbers mean quite a bit, but they have to be balanced against the practicalities of the situation and the —because I suppose if it were otherwise, you would need a computer as a president of a bank and not a human being who weighs these things and weighs emotions and reputation and good will?

THE WITNESS: These are all factors. Maybe I'm overemphasizing my input to the equation.

THE COURT: Well, that's your job. I suppose the executive officers hear from you and they hear from the mayor of the town and they hear from their board and they may hear from a minister, they may hear from a lawyer, and then they put it all together and out comes the decision whether they'll open up a de novo branch?

[1602] THE WITNESS: That's correct.

THE COURT: It could be that everything looks great in a town, an executive officer goes to the town and the mayor is antagonistic, the zoning board is antagonistic. He may come back and say, "We're not going there," or he may go to a town and the mayor is friendly, the zoning board is friendly, they'll widen the streets, "You can open up an outdoor teller, we want you here, we'll put new trees in for you," and he rides around the town, likes the location of it.

These are subjective things, really, that makes one an executive officer of a bank and puts the computer on the other wall. So there are other factors. I wasn't being critical of your job, you are doing your job and you are doing it well, apparently. But there are other considerations here.

THE WITNESS: Just one example, if I may, your Honor, there is an open town in the heart of our market in the geographic center of Fairfield County, has no banks and the zoning board will not permit any banks, so you run into all kinds of odd-ball situations.

THE COURT: Right. I can see that. I mean—[1603] these are things that you just can't get out of the charts. But they are the realities of the situation, one town will say, "Well, I'll let you put up a trailer for a year, I'll make things a little easier for you, we'll waive some side yard requirements, you know, as I said, widen the street for you, do a lot of things." Or another town gives you a real hard time.

THE WITNESS: That's right.

THE COURT: And you say, you know, "Let's go the easy route."

Why don't we have lunch?

(Recess taken for lunch at 1:00 p.m.)

[1604] AFTERNOON SESSION

THE COURT: Are the parties ready to proceed?

MR. CLARK: Yes, your Honor.

WILLIAM S. KRAFCHIK, having been previously duly sworn, resumed the stand and testified further as follows:

MR. CLARK: Your Honor, I said befor lunch that I had an exhibit that related to the Controller's regulations in investment of real estate and capital, and I'd like that to be marked for identification now. It is a document entitled: Intervenor's Answers to Interrogatory Set No. 2, Interrogatory 1, it would be P—

THE CLERK: The last number is 126.

MR. CLARK: —marked for identification, P-127.

THE COURT: Is there any problem on the admissibility?

MR. REYCRAFT: No, sir.

THE COURT: It may come in as a full exhibit.

MR. McENERNEY: There's no objection.

THE COURT: It is your answer, is it not?

MR. McENERNEY: Right.

THE COURT: Full exhibit.

[1605] MR. CLARK: If I can just read one paragraph from it, your Honor. The interrogatory asks the Intervenor to list all applications made to the Controller to exceed this 100% limitation on capital stock since 1966, describe them and state whether or not the application was approved or denied, and a description of all standards or guidelines applied.

The answer does so list. I don't know how many. It looks like about 10 or 15 applications, perhaps 20, all of whom—all of which were approved, and it states as follows:

"The only established standard is that described in the Intervenor's Interpretive Rulings Paragraph 7.3100(e) which states that the Comptroller or his designee will ordinarily approve an investment in fixed assets aggregating in amount up to 50 percent of Capital Stock, surplus, and undivided profits where a reasonable need for such investment can be shown. Otherwise, each application is approved or denied depending on the individual merits of the application."

THE COURT: Does that exhibit demonstrate how many were approved up to the 50% limit? In other words, those are the ones that were approved over the hundred [1606] percent?

MR. CLARK: Yes.

THE COURT: First step?

MR. CLARK: Yes.

THE COURT: Now, how many were approved between the hundred percent and the fifty percent?

MR. CLARK: Well, all applications that were made were approved. Now, there are—it does not show here the ratio between the amount applied for and the 50% limit, but there were none since 1966 in Connecticut that have been denied.

THE COURT: Thank you.

CROSS EXAMINATION CONTINUED

BY MR. CLARK:

Q Now, on the subject of capital requirements, Mr. Krafchik, CNB has been increasing its capital, hasn't it, every year through retention of earnings?

A Yes.

Q And what is the average increase per year? It's been—

A Well, it would—it would change, of course, every year depending upon the level of earnings and the percentage of earnings retained in the business. The last couple of years it's averaged about a million seven or a million eight, something like that.

[1607] Q So 50% of that incremental increase also under the Comptroller's guideline or limitation would also be available, would it not, for investment in fixed assets?

A The second step of this thing where it's 50% of the total?

Q Yes.

A Yes.

THE COURT: Is this each year for the last two years or the total?

THE WITNESS: No, the total.

Q Like to return to you—to your—to CNB's decision to invest two or three million dollars in its new home office plant or your home office addition. Did you participate in that decision?

A In part, yes.

Q What was the extent of your participation?

A How would we finance it. In other words, how would we actually pay the three million dollars plus that it was going to cost.

Q Did you address yourself to the question of whether or not it would be a good investment for CNB?

A Whether it would be a good one?

Q Yes.

A No. The reason being it was a necessary one. We [1608] weren't really in a position to decide as to its relative goodness, it was something we had to do.

Q In other words, you feel it is a good investment for CNB?

A Well, in anticipation that the bank will grow further in future years, yes.

Q Do you have any knowledge as to whether that investment will meet your 1% of return on assets, the standard which you have discussed earlier?

A What we're actually doing is taking three or three and a half million dollars of resources which are now earning us a return and freezing them, if you will, in nonearning assets, plant and equipment. So that it isn't —it isn't an investment which is in itself designed to provide any specific return. Quite the reverse is true. In that sense, we are, in fact, giving up income because a certain portion of our total resources which had been perhaps in—in cash or loans or securities is now in bricks and mortar, so that there is—I don't know if that quite responds to your question.

Q Well, it does.

A It's not looked at in the same sense as an investment and intended to generate a profit.

Q Well, is an investment in a new branch intended to generate a profit?

[1609] A It certainly is.

Q So there's a difference between the investment you are making in your home office and the investment that you would make in a new branch, is that right?

A Well, that's right. Because 90% of the activities of the main office—there is a branch office, of course, located on the main floor, but treating that as a separate unit, the rest of the building is occupied by what you would call back office support departments. The income is being produced out in the branches, these are the back office support, they don't have their own—you aren't —they're not customer departments in the same sense that the braches are. The point of contact with the customer is a little different, it's a different kind of a situation, it's not one that you look at and look for a return on it.

Q But I take it you weren't sufficiently concerned about your overall profitability, then, to worry about

this loss of earning power on a substantial amount of money?

A Not concerned?

Q Yes.

A I would say quite otherwise. We were, indeed, concerned, because by virtue of the analysis which I did and which others did, we had, in fact, identified the impact on our earnings per share.

[1610] Q What is that impact?

A Well, the—it would—it would have varied, of course, depending on the method of financing which we chose to employ. Based on the means that we are, in fact, following, that impact is estimated to be some 12 cents a share, roughly, at this point in time. By the time the project is completed, yes. This will be the cost, if you will, the give-up, in term of A, having these resources invested in securities or loans, and B, having them invested in assets which are not generating income.

Q Or having them invested, I take it, in branch offices, which also are income-producing assets, is that correct?

A In a sense, yes.

Q Now, to turn to your analysis of the de novo bank which—which you would—that is: if you decided to establish in New Haven, you came up with a figure of two and a half million, I'd like to inquire into that a little bit.

You indicated that you computed minimum capital requirement of one and a half million, is that right?

A That's correct.

Q And what were the incremental numbers that—what do they represent—which brought you to your two and a half million total?

A Well, first of all, I took the one and a half million [1611] dollar minimum capital investment and tried to balance that with whatever evidence I had that it may, in fact, be some other figure, and the fact that there really is only one observation in recent years in this State for a national bank, and that was two million, suggested to me that while this isn't enough evidence to indicate whether it would be a million five or two million,

maybe the truth is somewhere in between, so you are getting—you are in a range already just on your capital.

Q Excuse me, may I—but if you applied for a state charter—which , of course, you could do, couldn't you?

A That's true, but it is the State banking law which we must follow.

Q Yes. So the State banking law does now state that it would be one and a half million, is that right?

A That's correct.

Q And you would have the—it would be possible to apply for a state charter, as well as a national charter under those circumstances, wouldn't it?

A It is possible.

Q Yes. All right. Moving on from the capital, then, whatever it is, what other costs did you add into that?

A Bearing in mind that I didn't seek quotations, if you will, as to what legal expenses would be, didn't—that we didn't [1612] hold any meetings designed to lay out an elaborate public relations and promotional program for the new bank, I proceeded to simply, in my own mind, make some guesstimates as to the range in which those expenditures were likely to fall, I don't think, for example, that you could try to put over a brand-new bank in a town like New Haven, given the competitors that are already there, for less than something in six figures, meaning in the hundreds of thousands of dollars over some period of—

Q Is that legal expenses you are talking about?

A Pardon?

Q Are these legal expenses?

A No, I'm talking about start-up costs, promotional expense, you have got advertising, public relations and the like, and you don't—you can't walk away from that if you are trying to get a new business off the ground. This is typical.

Of course, the legal expense, as I say, I don't know what it costs, I'll be honest with you, to form a holding company, to charter a de novo bank. I have heard a lot of figures, I have heard 25,000, I have heard a hundred thousand by the time you are finished with the whole process, but it seems reasonable to me that based on what

those legal expenses are likely to be, based on what the promotional expenses are likely to be, based on what I know the capital requirements are, at least in minimum, that we are somewhere between two and two and [1613] half million dollars without stretching the imagination very much, and that is as far as I went.

Q The promotional expenses, however, would be incurred over a period of time, wouldn't they?

A Do you have a specific frame of—

Q Well, I was wondering what your frame is. I mean you aren't going to go out and spend six hundred and thousand dollars in a month, are you?

A Oh, certainly not.

Q How about a year?

A Well, a year, perhaps, is probably—a football park on that, yes, but, of course, what you are saying, what is our investment commitment, what does it have to be, that's in number you are measuring, you won't measure the first month or the first six months or the first year if you know, in fact, that it may take you two, you may have to respend it again if you aren't getting any results, so take your estimate of what that total is likely to be has to be cranked into your total investment.

Q Certainly. But you didn't crank in any possible income, did you, which might have resulted during that first year or two from deposits generated there?

A Well, I wasn't addressing the question of income, I was addressing the question of what the investment had to [1614] be, what were its likely dimensions.

Q But you will agree that the income will offset the investment, will it not, so that your net cost, if you—your net expense will be less by that amount of income?

A Well, hopefully, there certainly would be some income eventually. It depends on when it would come, how much would come. And again, whether one feels that income for the sake of income is important, or whether a certain level of income is important.

Q Well, if we're just talking about your costs now, and I am just trying to find out whether or not you considered possible income, and it appears to me that you did not?

A That's correct.

Q And it also is true, is it not, that as for other de novo branches which your bank has established, the direct income, leaving out the—well—well the direct income exceeds direct expenses within the first two or three years, doesn't it?

A I would say at our de novo branch offices we probably have gotten to that point in about three years, that's correct, a little bit of a difference between $250,000.00 investment and a two and a half million dollar investment, however.

THE COURT: I'm never quite sure what the word "investment" means. Does the million and a half include site, property purchase, a building, if necessary?

[1615] THE WITNESS: That's the capital we must put up to get—there must be that much capital backing, so when you have done that very first step, your Honor, you have a balance sheet that shows, let's say, for example, two million dollars of capital on one side, two million dollars in cash on the other. Now you have got to go about—shopping around for a place to do business, either acquire and remodel a site or build a site, equip it with furniture and so forth, you go in there, but the capital requirement is a legal one, which is simply the underlying financial structure to support it.

THE COURT: I'm trying to focus in on this two and a half million. Does that include a decision that you have to be on Church Street, or can you be up Whalley Avenue somewhere or out Dixwell? Wouldn't all these factors have to come in? Or does it matter.

THE WITNESS: Well, it would—it wouldn't really change the two and a half million dollars whether you were on Church Street or on Dixwell Avenue, because you are now taking the cash that you have received in the hopper by way of putting up captial and you are going to spend part of that cash for a buliding and equipment. So that if it's half a million dollars on [1616] Dixwell Avenue and ¾ on Church Street, that doesn't affect the two to two and a half million dollar investment, that's already been figured in.

Q Well, that was—the Court certainly anticipated my

next question, and that was that your two and a half million, then, does not count twice for any building costs, does it, you have—your building costs are going to be included in that capital which you create, right?

A That's right. I think there may have been some—possibly some earlier confusion when Mr. Hawley was testifying in thinking in terms of, let's say, a four-office entry, in which case there may, indeed, be some, you know—some additional funds required, particularly if you had exhausted your legal limit just for the main office, it would, you know, be hard to say either way, but if you are getting into additional offices, it may well go higher, yes.

Q Well, your legal limit on one and a half million dollars is $750,000.00, isn't it, land and building?

A That would be correct, yes.

Q And I think you testified that at least for a branch, the average branch in the past years, it's been 250,000?

A The average has been, but as I think I indicated in earlier testimony, if you drew a trend line, it is decidedly upward, and most of the branches we've done recently have been over [1617] 300,000. In fact, the most recent one was 500,000, and so if you are going to relate that to a main office of a new bank, I think you are talking of an entirely different situation. You aren't going to get away with anything like 250 or $300,000.00, you may for the branches, but you won't for the main office.

So you could exhaust that $750,000.00 pretty quickly and you aren't going to get three or four offices out of it.

Q Well, you would get more than one, wouldn't you?

A You would—I would acknowledge that you could probably get one, yes, one in addition to the main office.

[1618] BY MR. CLARK:

Q You would not expect to put up those four branches right away, would you?

A Well, if I'm going to take that expensive a route in an attempt to penetrate a town like New Haven, I'm not going to wait around too long; I'm going to presumably

go at it aggressively, I don't—of course, funds permitting which immediately raises a problem, where do you go from here. You have got your one office and possibly one branch, but now what do you do?

Q Did you consider the feasibility of leasing any of this space?

A It's an alternative, yes.

Q But that alternative was not a part of your calculations, was it?

A In estimating costs, no, it wouldn't change the two and a half million whether you owned or leased initially.

Q But it certainly would affect the multiple branches situation, wouldn't it?

A Yes.

Q In fact, your bank has used the leasing method of expansion extensively, hasn't it?

A Well, less than 50 percent, as I testified earlier. We do, of course, investigate the possibility of leasing [1619] most of the time, as far as I know, and, if it's possible, if a deal is possible to put together, fine; if it isn't, then we must own. And there are many cases where we've had no alternative but to own.

Q Are you aware that there is a large amount of new office space in New Haven which is being presently under construction or planned for construction?

A I am not aware of those statistics, no.

Q In other words, you did not go to New Haven and really try to look at the situation to determine whether or not leasing would be or would not be a reasonable alternative for you?

A The whole proposition hasn't been seriously considered, so obviously I haven't.

Q Do you consider Connecticut Bank & Trust to be effectively competing in Bridgeport at this time?

A In Bridgeport?

Q Yes.

A I think the testimony indicates that there are—they have business we'd like to have. I think they're an effective competitor in the corporate sector of the market, yes. In the retail sector of the market, no. Obviously

they have one office in Bridgeport, over in Lafayette Plaza.

Q Do you expect that they will become more [1620] effective both in the corporate and retail?

A I certainly do.

Q How will they become more effective in Bridgeport in the retail level?

A Well, at the retail level they're going to need more offices.

Q Is that going to be possible for them?

A They can't open additional offices in the City of Bridgeport. It's one of the problems with an acquisition in a closed town.

Q So will they become more effective in Bridgeport?

A If you mean the City of Bridgeport, it's relative. That one office could indeed grow, but it, of course, does place a limit as far as what one can draw from one location.

Q I take it, however, that that one office is effective in the commercial-corporate side of your business?

A More so than on the retail side, because you go to the customer more than he comes to you.

Q How about Hartford National Bank, Mr. Krafchik, in Bridgeport? Are they an effective competitor in any sense?

A I would think in terms of what we've identified, in terms of individual corporations, businesses in the area, I would say yes. I would say that in those—and the Masters' report also points out what business they have. [1621]When you have—when you are of that size and you have corporate account officers calling all over the state on corporations—and, indeed, outside the state—it's—it seems to me fairly obvious that they are a competitor.

Q How are they competing in Bridgeport, then, without an office here?

A By sending corporate calling officers into the area.

Q Where do they come from?

A They come from—since I have a personal friend who's one of them, they come basically from Stamford, which is their Fairfield County headquarters.

Q They can be that effective in Bridgeport from Stamford?

A I think the record indicates that they're in several other towns in the County as well as Stamford. They apparently have regionalized their corporate calling efforts and they in this area operate out of Stamford. And, yes, you can be effective. Obviously, the New York banks are even more effective calling here from New York.

Q So the Hartford banks, then, in your opinion, are no more effective than the New York banks are?

A I didn't say that, and I don't know the relative effect of this.

[1622] Q You testified that the sale of these six offices in the Orange-Milford-Ansonia-Derby area would provide additional capital for your bank.

Do you feel that the price at which these offices will be sold is a fair price?

A There's a lot of ways to look at that.

If you look at what's normally done when one company buys a piece of the business of another company, the analysis game tells you to look at the earning power of what you are buying; and I would say that based on the earning power of what we're buying, the buying banks are getting a pretty good deal.

Q In other words, the contributions to earnings which they may expect to receive may in fact be greater relative to the price that they are going to pay than your one percent standard; is that right?

A Well, I know our experience varies a good deal from office to office. As I recall, the offices in question are perhaps better than average performers. I don't recall specifically how well they've been doing, but if the price, for example, of our Milford office is $350,000, then that then becomes the investment of the Hartford National Bank in this office.

Q You also testified regarding the profitability of [1623] your bank relative to total assets?

A Yes, sir.

Q Did you test the relationship between your profits and your total capital?

A I always do as a matter of routine.

Q Did you test it as it relates to that of other banks in Connecticut?

A Yes, I have.

Q How does it compare?

A Compared to, let's say, for example, the top ten banks in Connecticut, we rank fairly high.

Q Return on capital is a commonly accepted means of analyzing profitability, isn't it?

A It's commonly accepted, but it has a major trap in it, and that's that no bank is comparable to any other bank because all banks' capital strengths are quite different.

Now, you take ours. If you relate our capital to our size of resources, we are very weak, so obviously, based on earnings to capital, we're going to look strong, because we're undercapitalized. Another bank that is more highly capitalized—they're not going to look as good as we do in that measure.

The only true measure that is a common denominator for all banks is the return on assets, because that's the [1624] dollars you make with the dollars you have to work with, and that's your total resources available. That's the only one that approaches comparability across all banks. Return on capital is interesting, but it doesn't tell me I'm doing a better job than another bank.

Q Your stockholders do not care about the return on assets, do they?

A I would hope they do.

Q Which is more important to them, return on assets or return on capital?

A An investor is inclined to be more concerned with the return on equity. That presumably is one of the major factors determining the value of his investment in the marketplace.

Q You also testified as to the price-earnings ratio of your bank. I just wanted to make clear as to what that is. I think you said it was around seven, but you said—

A That's right.

Q —that your earnings were—why don't you give us those figures again. I thought it was around eight.

A Well, depending on what point of time you take it. It fluctuates from seven to eight. I would say that for most of this year it's been in the 7 to 7½ range. If the bid price is 18 today, it's going to be one thing; if the [1625] bid price is 19 next week, it's going to be another. But if you look at it over a time, over the course of a year, let's say, you will find that it's closer to seven than it is to eight.

Q You said it is low compared to the Hartford banks?

A Yes, sir.

Q What are they, around ten?

A They're around ten.

Q How does it compare to some of the other banks in the top ten?

A In Connecticut?

Q Yes.

A Well, I did testify that it was the ninth lowest. I can't recall the one that's lower, but, of course, all of the others are obviously between seven and ten.

Q Do you have those numbers available which you used to compute that seven ratio? I would like to clarify that.

A Well—

Q All right, they are in the record. I think we can do it—

A The point again is that on any one particular day that ratio is likely to be different based on what the bid price for the stock is in relation to the most recently reported earnings. Okay. Now, if our most recently [1626] reported earnings for a twelve-month period are two-sixty and the price on that day is $18, you are dividing two-sixty into $18, and that is the multiple which the market is willing to pay based on the earnings performance of it.

Q I see here the price of 21 to 22 dollars, earnings of two-fifty to two-sixty-five.

You do not dispute these numbers, do you?

A It's hard to say. I haven't looked at the paper today to see what it is. It has fluctuated anywhere from 19 to 22 over the last several months. 21 to 22 I would say is probably a slip of the tongue, if you will. I don't

think it's ever been as high as 22 this year. It is, however, in the record, if the price were 22, it might be more like eight times earnings, I think, for the record of the financial journals would prove that it's closer to seven.

MR. CLARK: I have no further questions, your Honor.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. REYCRAFT:

Q Mr. Krafchik, Mr. Clark said something to the effect that you could apply for a state charter, and you said yes, in connection with this holding company. [1627] Are you familiar with the requirement of the State Superintendent that the persons applying for state charter state that they will not sell to anyone else or merge for five years?

A I understand that such provision exists, yes.

MR. CLARK: Your Honor, I think, if Mr. Reycraft is simply quoting from a document which he has put in, the document speaks for itself. I do not think that the document is proof that the state has any such requirement, and I think the question is improper.

THE COURT: This is the second time this has come up.

What document have you put in, Mr. Reycraft, to support—

MR. REYCRAFT: I do not have the exhibit, your Honor, but it is a copy of the application form. It is D-7, which is a Xerox of a form of the Connecticut State Banking Department, entitled "Request to Banking Commission For Authority to Organize and Establish a Corporation to Engage in the Business of Banking," as provided under the provisions of Section 36-53 of the Connecticut General Statutes; and one of the statements which [1628] the organizers of the bank are required to attest to is as follows:

"This proposed bank is not to be organized for the

purpose of selling to, merging or consolidating with any state bank and trust company or national bank now in existence."

So that I do not know whether Mr. Clark is questioning the authenticity of the document. If he is, why, then we can go through the formalities to establish that it is authentic. But this is the form which is used by the State Department of Banking in Connecticut, now.

THE COURT: Your objection is what, Mr. Clark?

MR. CLARK: I do not question the authenticity of the form, your Honor. I question its applicability to this whole question of chartering a new bank through a holding company.

First of all, as far as I know, there is no provision in the law that says that a bank cannot be formed for the purpose of merging or consolidating with another bank. Whether or not this is a policy of the state regulator is not entirely clear just because it exists on this [1629] exhibit; but, even if it is a policy of the state regulator as to the bank which it is chartering now, I contend that there is no showing that it is related at all to a form of expansion through a holding company, and I do not think that defendants have made a connection between what the state regulator must do under present law, either as to application by people who want to charter a new bank for their own purposes or as to applications for a new bank through a holding company.

THE COURT: I have accepted this document with respect to new banks, and the provision is part of the record, so, with respect to the acceptance initially, the document is in evidence. Whether it pertains to the new law when a new bank is created through the holding company route, I am just going to take a neutral position on it until somebody comes forward with proof on that.

If this witness knows, fine. Maybe you can find out if he knows if that provision is applicable. But if he does not know, then I suspect somebody will have to come forward to show me the applicability of that provision to an entirely different statute.

[1630] MR. REYCRAFT: All right, your Honor.

The application form, which I understand is not con-

tested as to authenticity and that it is a copy of a form which is now in fact used by the State Banking Department and which is required to be signed by the organizers of newly chartered state banks, refers to selling to, merging or consolidating with any state bank and trust company or national bank now in existence.

If the question is whether this excludes the acquisition of a newly formed bank by a bank holding company, then that is a question which—I think it is clear that it does; but we will produce a witness from the State Banking Department, if necessary, to do that.

I thought we did not need to do that.

THE COURT: How can you set up a bank holding company, with the intent, apparently, behind the statute, if you cannot merge or you cannot combine?

MR. REYCRAFT: I do not think you can, your Honor. I think that to form a holding company—that is just a general business corporation, so you form a general business corporation; there is [1631] no problem in doing that. But it is when that corporation buys the stock of a bank that you have the first problem; when it buys the stock of any bank, even a single bank, now, under the 1970 Bank Holding Company Act amendments, the Federal Reserve Board approval must be obtained.

That first acquisition I would not regard as coming within the language in D-7, because it is not putting that bank together with another bank; it is only putting it under a single business corporation, which is a one-bank holding company. But if that holding company—say, for example, it is Connecticut Holding Company that owns Connecticut National Bank; that is a one-bank holding company, so that requires Federal Reserve Board approval just to do that, which, since it would not change the control of the bank, I would assume would be forthcoming.

But then, if that holding company says to a group of people "Why don't you fellows organize a new bank in New Haven, get five or six of you together and put up a million and a half, two milion in capital, and after you do it then our holding company will acquire that bank," those [1632] fellows we talk to have to sign this

form. They have to swear—well, there is no place for an oath, but they have to sign their names to a statement that says that this proposed bank is not to be organized for the purpose of selling to, merging or consolidating with any state bank and trust company or national bank now in existence.

Only if you say that because the holding company that owns CNB is acquiring rather than CNB, itself, because of that little legal technicality, that you are not merging or consolidating with CNB—which is true; it is not a merger or consolidation with CNB technically. But it certainly sounds to me like it is selling to the same control group that controls CNB, so I think anybody who signed this document under those circumstances would be making a false statement.

THE COURT: You can see how important it is in one aspect of this case, because the government is saying as one of its arguments "Go the holding company route" and you are saying—

MR. REYCRAFT: Yes, sir.

THE COURT: —if you went that route you [1633] would not only have the obstacles that you already mentioned but you have a five-year barrier here.

MR. REYCRAFT: You have to wait. It says—maybe I was being too kind to Mr. Clark—

THE COURT: It goes beyond it, because it says our intention is not to merge.

MR. REYCRAFT: And it does not say in five years. I think I was too generous to Mr. Clark, as a matter of fact.

THE COURT: That, of course, raises an issue here.

MR. CLARK: Yes, your Honor, I think it does, and the issue is whether or not this form of expansion is legal under state law.

This document is not relevant to that. State law contains no provision like this. This apparently is a policy which the state bank regulatory agencies now have relative to a bank which they now charter.

It is well known that de novo expansion via a holding company has not been tried in this state. But this is a different means of expansion; this is not a typically new

bank, and, in fact, as I understand the process, there is not an actual [1634] acquisition as such.

As I understand it, the holding company controls this new bank from the start. But whether or not there is a formal acquisition or merger, it is so different from the type of merger that we are familiar with today that we contend, first, if there were a state law which used the words that are in this form, it would not be applicable, but, second, there is no state law, as far as I know, that has this provision.

So that whatever the policies of the state regulatory agency is today as to banks which they charter today, which are in no way affiliated with a holding company, we do not think it is relevant to holding company route of expansion.

MR. REYCRAFT: On one point Mr. Clark is simply wrong, which is his assumption that there is no acquisition of newly charactered banks, because individuals must organize the newly chartered bank as they must organize any new business corporation, and there is thereafter an acquisition of the stock of that bank. It is permitted in some states. But there is an acquisition of the stock.

If Mr. Clark is saying this is not a legal [1635] requirement, it is not embodied in the general statutes, and the State Superintendent—yes, he does have this form, he does require this right now, but he might change his mind next week, that is one thing. But it is a fact that it is required right now, and I assume that is not contested.

THE COURT: Would the holding company provision of the statute—I could see the value of this provision under the Home Office Protection Statute, because, as I raised the point earlier, if you cannot go into a town under the Home Office Protection, can you collusively get around that; and the answer was generally no because of this provision.

MR. REYCRAFT: Yes, sir.

THE COURT: Mr. Clark is saying two things: One, the law does not require that this provision be signed,

and, two, even if the former law requires it, it is not applicable to the new Holding Company Law.

We are right back to where we have been several times during this trial, and I said somebody is going to have to explain to me what the [1636] implications are to this new holding company statute and what rules and regulations are applicable. Who has the burden I am not sure, but we certainly have an issue here.

MR. CLARK: We will certainly do that, your Honor. We think it is a question of law, and we think that the law is clear that where holding companies are permitted this form of expansion is permitted, and we will so demonstrate to your Honor.

THE COURT: Very well.

Go ahead, Mr. Reycraft. You may proceed as you wish.

MR. REYCRAFT: I have just one more question.

BY MR. REYCRAFT:

Q The capital requirement that you testified about, Mr. Krafchik, the one and a half million dollars—that is the minimum requirement, is it not?

A Yes, sir.

Q You are familiar with cases where more has been required?

A Yes, I am.

MR. REYCRAFT: That is all I have.

THE COURT: Mr. McEnerney?

[1637] MR. McENERNEY: No questions.

THE COURT: Mr. Bell?

MR. BELL: Nothing.

THE COURT: Recross?

MR. CLARK: No, your Honor.

THE COURT: You are excused.

(Witness excused)

[1638] CARL B. ADOLPHSON, called as a witness, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Will you be seated, please.

What is your name, sir?

THE WITNESS: Carl B. Adolphson.
THE CLERK: Where is your home town?
THE WITNESS: Easton.

DIRECT EXAMINATION

BY MR. REYCRAFT:

Q Mr. Adolphson, what is your present occupation?
A I'm president and chief executive officer of the City Savings Bank in Bridgeport.
Q How long have you held that position?
A Since July.
Q What was your position prior to that time?
A Vice-president and secretary.
Q How long have you been with the City Savings Bank altogether?
A 34 years.
Q Are you familiar with all areas of that savings bank's operations?
A I hope so.
Q What are the total assets, approximately, of the [1639] City Savings Bank?
A 157 and three-quarter million as of today.
Q What is the total loan portfolio of the City Savings Bank?
A 114 million.
Q How does that loan portfolio break down as between real estate mortgage loans and other loans?
A Real estate is about 72½ percent of assets, and other loans are about 2½ percent of assets.
Q What do other loans include?
A Personal loans and collateral loans, including educational loans, which we call personal loans.
Q Do collateral loans include automobile loans, for example?
A Yes.
Q What are your total deposits?
Did I ask you that?
A No, you did not.
About 141½ thousand—million.

Q Are they all savings deposits?

A Yes.

Q What interest rates do you now pay on savings deposits?

A They vary from 5 to 6.27.

[1640] Q How does the variation come about?

A We have four different categories of savings accounts.

Regular savings are 5 percent that are compounded continuously, that give you effective yield of five- twenty.

We have 5¼ percent accounts that are 90-day-notice accounts.

We have one-year certificate and we have two-year certificates. Two-year certificates give you an effective yield of 6.27.

Q The amount that you are able to pay on savings deposits generally exceeds that of commercial banks?

A Slightly, yes.

Q How do the interest rates which you charge on personal loans compare to those charged by commercial banks?

A Approximately the same. We're slightly less at the present time.

Q What percentage of your total deposits are you permitted to put into personal loans?

A I'm not sure. I think it's 4 percent. I'm not quite positive.

Q I believe it is 8.

A I have to look at the statutes.

Q I believe it is 8.

[1641] A 8.

Q Do you consider that your savings bank is in competition with commercial banks in Bridgeport in making real estate loans?

A Definitely.

Q Do you consider that your savings bank is in competition with commercial banks in Bridgeport for deposits, savings deposits?

A Yes.

Q Do you consider that advertising that is seen by consumers and depositors in the Bridgeport area, by sav-

ings banks out of this area, has any impact on your ability to raise or lower your interest rates?

A I didn't understand the question.

Q If a savings bank advertises through a newspaper which is circulated in the Bridgeport area, does that have any impact on your bank's ability to raise or lower your interest rates?

A I still don't understand.

Q For example, if the Bowery Savings Bank has an ad in The New York Times, which is circulated in the Bridgeport area, do your customers expect the same rate?

A Oh, yes. I would say yes.

Q Do you both pay the maximum rate allowed under law?

[1642] A At the present time we both do.

Q Why don't you pay less than the maximum allowed?

A Because of the competition.

Q Mr. Adolphson, are you familiar with the efforts which are made to obtain checking account powers for savings banks in the State of Connecticut?

A Yes, sir.

Q Have you formed an opinion as to the likelihood that those will be obtained sometime in the future?

MR. CLARK: I object. This involves legislative matters and so forth. It is speculative.

THE COURT: It is highly speculative, but I will take it as to weight rather than admissibility. He may have some knowledge that might throw some light on it.

You may answer.

A Rephrase the question again, please.

Q Yes, sir.

Do you have an opinion, have you formed an opinion, as to whether you think that savings banks in the State of Connecticut will obtain the legal power to have checking accounts?

A I have formed an opinoin, yes, and it's affirmative.

[1643] MR. REYCRAFT: I have no further questions.

THE COURT: Mr. McEnerney?

MR. McENERNEY: Nothing.

THE COURT: Mr. Bell?

MR. BELL: Nothing, your Honor.
THE COURT: Mr. Stone?
MR. STONE: No.
THE COURT: Very well, cross-examination.

CROSS-EXAMINATION

BY MR. REA:

Q Mr. Adolphson, I believe you testified on direct that your savings bank does compete with commercial banks for real estate loans; is that correct?

A Yes.

Q Are you aware of any different conditions in the making of real estate loans as between savings banks and commercial banks?

A I believe that commercial banks are restricted to the amount of savings deposits that they have.

Q What sort of restriction, are there for savings banks?

A We're limited in the amount that we can—of the ratio of assets that we can invest in mortgages.

Q Do you know what that ratio is?

[1644] A It's a combined factor up to 85 percent, depending on how much is in FHA or government insurance loans.

Q Would that permit your bank or any savings bank, then, to lend a greater proportion of its assets for real estate purposes than would a commercial bank?

A I'm not sure, but I believe we could.

Q I believe you mentioned that real estate loans constituted all but 2½ percent of your total loans; is that correct?

A Yes.

Q Do you have any idea of what percentage real estate loans to total loans, are held by commercial banks?

A I do not.

Q Would you have any basis for believing that it is significantly less than the percentage held by savings banks?

A It might be.

Q Would it surprise you to learn that on the average of maybe 30 to 40 percent, real estate to total loans?

A It wouldn't surprise me, no.

Q Do you regard your bank, savings bank, as possessing more expertise, if you will, in the area of making real estate loans?

A We hope so.

[1645] Q Can you give me the basis for that opinion?

A We try to hire men with that expertise.

Q Can you give me an idea of the number of men who work at City Savings whose area of expertise is the making of real estate loans?

A At least five.

Q Do you know how that would compare to the number of men in a commercial bank?

A Probably a little more.

[1646] Q And I take it, as well, that your bank has a separate mortgage loan department?

A Yes, we do.

Q And is that typically the case in a commercial bank as well?

A I think so.

Q But there would be a difference in the staffing of those two departments, commercial banks as opposed to savings banks, is that correct?

A It's up to the bank.

Q You also mentioned the fact that your bank does make personal loans, and was it your testimony that the percent of personal loans to total loans was included in the two and a half percent and that included both personal and collateral loans?

A Yes.

Q Are you aware of the percentage of personal loans to total loans that commercial banks make?

A They're quite a bit higher.

Q And to what do you attribute that higher percent personal loans to total loans held by commercial banks?

A Probably because of the commercial context they have with dealers.

Q Can you explain that in a little more detail?

A Our particular bank policy is not to go out for dealer [1647] loans, we deal with the individual, the retailer, and whereas a commercial bank usually makes a contact with a—say, an automobile dealer and in some instances give them a kick-back in order for them to place the paper with them, with that particular bank.

Q So that, in other words, for that type of loan you do not compete with commercial banks?

A We do not. Except if the individual comes in and gets a lower priced loan from us.

Q But to the extent that the individual would not, and I take it that is typically the case, as it with this—you call it dealer paper?

A Yes, as far as dealer paper is concerned, we don't go out for the dealer paper.

Q Do you make secured personal loans?

A Only on—not personal loans, they're secured collateral loans, that's on our own savings passbooks, primarily, we will give some collateral loans on acceptable stock.

Q And do you regard your bank as being competitive with commercial banks in this area of collateral loans?

A On collateral loans? Yes. To a certain extent. We probably are a little more restrictive than they are. I know they will give a higher percentage of the collateral than we will. We limit it to 60%, they usually limit it to 75.

[1648] Q And does your bank issue 90-day notes?

A No.

Q And why not?

A We aren't permitted.

Q And is that a feature of commercial bank lending?

A Yes.

Q And, therefore, obviously in that area you do not compete with commercial banks?

Do you regard that as an attractive feature to the lending abilities of commercial banks?

A Yes.

Q Can you explain why?

A For a temporary loan, in fact, I think that there'll

probably be legislation introduced for savings banks to permit them to have 90-day loans.

Q But at the present time they do not, is that correct?

A They do not.

Q Would it be your opinion that this confers a significant advantage on commercial banks as opposed to savings banks when it comes to making loans to individuals?

A It depends on what you consider significant.

Q Well, in your view as a savings bank of 34 years?

A It would be an additional service that savings banks would like to have.

[1649] Q And would the addition of that service enable them to compete on a much firmer ground with commercial banks?

A Slightly.

Q You also mentioned personal savings accounts. Was it your testimony that the Ctiy Savings is currently offering the maximum rates on savings accounts for all types, both passbook and certificate?

A Yes.

Q Do these accounts generally represent personal accounts? Or do they represent personal accounts totally?

A It's mostly personal accounts.

Q Can you give us a percentage overall?

A I don't know.

Q Would it be close to 90%?

A I would think so.

Q Certainly, in the passbook end, would it be?

A These are all passbooks.

Q Well, I'm talking about certificates as well as—

A You are talking about savings accounts.

Q —savings accounts.

A We consider certificates as savings accounts. I can give you the figures as far as—we're less than 15% in certifcates, of our deposits.

Q Clearly the bulk of your savings is held by individuals, [1650] would that be correct?

A Yes.

Q And can you give us an idea of the area from which you draw these personal savings accounts?

A Wherever our offices are located from, from the greater Bridgeport area, we have six offices, and they're located in six different towns.

Q I believe you testified on direct that savings banks outside your area offer competition, or am I—is that proper characterization of your testimony?

A Any bank in our area offers competition.

Q Do you regard the—for example, the New York savings banks as operating in your area?

A No.

Q Do you know of any—of your personal savings customers that you have lost to New York savings banks?

A When they gave a higher rate of interest, we did lose some, yes.

Q How many?

A Not too much.

Q Can you give a ballpark number?

A I can't—I don't know.

Q And these would be, I presume, limited to the few people who do commute to New York City?

[1651] A True.

Q Does your savings bank, Mr. Adolphson, offer trust services?

A No.

Q Do you offer foreign currency exchange services?

A No.

Q And, of course, you don't offer checking or commercial lending because you are not permitted to under law, is that correct?

A Right.

Q Are you permitted to offer or to make third party transfers under law at the present time?

A No. Not to my knowledge. What are you referring to here?

Q Well, I believe—do you recall our interview of a month ago today in your offices?

A Yes.

Q Do you recall telling me at that time that savings banks are permitted to engage in a limited manner in the making of third party transfers, such as the payment of gas, electric and water bills?

A Yes. But we do not do so.

Q But you are permitted to do so?

A Yes.

[1652] Q Can you tell us why you don't engage in that type of operation?

A I take it back, we do offer it for CMS payments only, and any payments that we receive we put into a regular savings account that they have with us.

Q CMS is?

A Connecticut Medical Service. It's comparable to your Blue Shield or—I imagine.

Q Would it be correct to say that the legal powers are broader than you are currently utilizing at your bank?

A We don't want to be bothered with utility bill paying.

Q Do other savings banks currently—

A I think there is one, yes.

Q Do you regard the third party transfer as sort of an intermediate step between no checking and total checking accounts or total acceptance of demand deposits?

A I think it has its eventual potential, yes.

Q So at the present time you see some drawbacks in even the utilization of this third party transfer method, is that correct? Or otherwise, you would be engaged in it?

A Not necessarily. We don't see where it would be profitable at the present time.

Q Looking down the line a little further, I believe you testified that you foresaw the savings banks acquiring the [1653] right to accept demand deposits, is that correct?

A Yes (indicated).

Q Do you at the same time foresee that there would be some attendant problems to the acceptance of demand deposits by savings banks?

A When you offer a new service, there's always the possibility of attendant problems, yes.

Q Would one of those probems be acquiring the necessary expertise to handle this new service?

A I think there's quite a bit of expertise available.

Q Do you think it is available in your bank?

A Not at the present time, no.

Q And how would you rank your bank in terms of size among the savings banks in the State of Connecticut?

A I think we're the eleventh largest in the State out of 68.

Q So you are one of the larger savings banks?

A Eleventh largest, yes.

Q And you say at the current time you would not have the expertise to engage in the offering of checking accounts, is that correct?

A With our present personnel, no.

Q Do you see that there are other savings banks at the present time which do have the personnel to engage in this new [1654] service?

A I'm not sure. The two largest banks may have, but I'm not positive.

Q Based on your own knowledge, you—

A I don't know.

Q Do you think that if the right to accept demand deposits was permitted under Connecticut law that—assuming some other savings banks did offer checking accounts, would your bank then offer checking accounts?

A I would think so, yes.

Q That is conditioned on the assumption that other savings banks could also offer it?

A Providing we got the legislation approving it, yes.

Q That assumption is right.

Mr. Adolphson, are you knowledgeable about correspondent banking?

A To a certain extent, yes.

Q Can you explain—I mean in the course of your experience with City Savings, have you at one time or another been in charge of an area of correspondent banking within a bank?

A In what area of correspondent banking? Setting up checking accounts or utilizing them for security analysis?

Q Well, probably in the broad spectrum of services that [1655] correspondent banks generally make available to their banking customers?

A We have several of the banks calling on us regularly trying to sell their services to us.

Q I just wanted to establish your familiarity with correspondent banking.

So you are familiar with correspondent banking and how it operates?

A As I understand it, yes.

Q Are you aware of any commercial banks of the same general sizes operating in the same markets which maintain correspondent banking relations with each other?

A With each other?

Q Right.

A You mean like City Trust or City National and Connecticut National?

Q Right, that's a good example.

A They have a common clearing house.

Q But do they perform—other than that, do they perform more than one correspondent service for the other?

A I don't know.

Q Would it seem unlikely to you that banks in that situation would perform correspondent services for each other?

A Not if they're competing against each other.

[1656] Q In other words, if they are competing, you would imagine they do not correspond with each other?

A Oh, they'd have to correspond—correspond with each other.

Q Well, I mean correspond in the sense of correspondent banking.

A Well, in some areas, I assume they do.

Q Do you have any personal knowledge like that?

A No.

Q What makes you reach that conclusion?

A I think they're all friendly competitors.

Q Do you know why commercial banks who are competing with each other would want to perform correspondent banking services for each other?

A I don't understand what you are driving at here.

Q I mean can you see any reason for competing banks, be it friendly or otherwise, to offer correspondent banking services to each other, one to purchase services from the other?

A If one is a particular specialist in a certain field, they might do so, yes.

Q But assuming no particular specialty, that's why I made the initial assumption.

A Probably not.

Q In the same general size operating in the same market?

[1657] A Probably not.

Q I assume there might be a different set of circumstances if you were to look at a Bridgeport bank versus a New York bank or a Boston bank? And would it be unusual to find a savings bank which has a commercial bank correspondent of approximately the same size in the same market?

A Would it be unusual to have a savings bank—

Q Which corresponds with a commercial bank in the same market, assuming, you know, relatively the same sizes?

A They are at the present time.

Q Isn't it a fact that your bank is presently a correspondent of Connecticut National Bank?

A Yes.

Q And for what services?

A Check deposits.

Q And do you also have correspondent banking relations with the First New Haven National Bank?

A Yes, we do. They handle our payroll.

Q That's for payroll services, is that correct?

A Uh-huh.

MR. REA: I have no further questions.

THE COURT: Redirect?

MR. REYCRAFT: Yes, sir.

[1658] REDIRECT EXAMINATION

BY MR. REYCRAFT:

Q Mr. Adolphson, I believe you testified that your bank does not at the present time buy consumer paper from automobile dealers, is that correct, but there's

no reason, is there, why you could not make a loan to a —any customer that an automobile dealer sells a car to?

A We do. Every day.

Q Now, you also were asked about the degree of your expertise in accepting demand deposits, and I understood you don't do that now, so you don't have people doing it, you understand, of course, don't you, that the smallest banks in the country are able to do this?

A Yes (indicated).

Q Do you envision any difficulty in obtaining the necessary personnel if the legal power becomes available?

A Not at all.

MR. REYCRAFT: Thank you. That's all I have.

THE COURT: Anyone else? Recross?

MR. REA: No questions.

THE COURT: Mr. Adolphson, let me present this hypothetical to you: If you were located in a town all by yourself had the field completely to yourself, and a savings bank moved across the street [1659] from you, I think it would be fair for you to say to yourself, "I am not in competition a hundred percent of the services I offer with X Savings Bank which just moved into town," would that be a fair statement?

THE WITNESS: Yes.

THE COURT: Now, if a commercial bank moved directly across the street, could you give me a rough estimate, but based on your knowledge and experience over the years, as to what you would say to yourself with respect to the percentage of competition you would have with that commercial bank, percentage of your services that you know you would not be in competition with each other, and percentage of your services in which you would feel maybe we'll lock horns and maybe we won't? Do you understand the question?

THE WITNESS: Yes, I do. I can give you a perfect example. We established a branch up in the Town of Huntington, in a shopping center, and who should establish a branch right in back of us but Connecticut National Bank, and they were open on Saturdays, we had been there first, we were the first ones in there, we estab-

lished a fairly good growth [1660] pattern, and when they came in it slowed the growth pattern as far as our deposits are concerned.

Granted, they had some additional services, and they offered the one-stop banking that commercial banks have available, but we're both growing at a fairly good rate at the present time. Percentagewise, it's difficult to assess. They did slow our growth rate when they moved in.

THE COURT: I didn't mean to imply I was trying to get at a percentage of business. Let me give you a complete hypothetical.

If a savings bank moved across the street from you, you would say in your bank, "We're now in 100% competition." Commercial bank moved across the street, would you say something to the effect, "We are in X amount of competition"?

THE WITNESS: They're in a hundred percent competion because they offer all of our services in additional —in addition to more at the present time.

THE COURT: But there are some areas that you do not offer services that they do, is that not so? They were spelled out on cross examination, something about a 90-day loan?

THE WITNESS: We have slight competition in the— [1661] in—as far as the law is concerned, we are allowed to give a little larger percentage of return to our savings depositors, the interest rate permissible. But it is difficult to have people walk across the street for an additional half of 1% interest in some instances, you only get the sophisticated investor who will do that.

THE COURT: Let me ask you a concrete business question. You had this shopping center area to yourself and you were doing very well, in came CNB. What changes other than the ones you have mentioned came about? One, you felt that your deposits did not have the growth it should have, or that you had anticipated without CNB being around. Any other changes that were made because they were around? Can you think of any others?

THE WITNESS: It provided an advantage to us because they were one of our depositors, we used them. We were able to get our currency quicker when we needed extra currency or coin. Other than that, no.

THE COURT: You didn't change the hours of your bank?

THE WITNESS: We did not.

[1662] THE COURT: You didn't increase personnel?

THE WITNESS: No.

THE COURT: You didn't change any rates?

THE WITNESS: No.

BY MR. REYCRAFT:

Q Mr. Adolphson, was CNB competing with you at that branch for all the customers you tried to serve?

A They were competing for all of the services that they had available, which were practically all of ours.

Q Everything you could do, they could do, right?

A Yes.

MR. REYCRAFT: Thank you, that's all.

THE COURT: You are excused, Mr. Adolphson.

(Witness excused.)

MR. REYCRAFT: Your Honor, yesterday during Mr. Chadwick's testimony there was a question about possible confusion about an exhibit, and Mr. Bell has discussed that with Mr. Chadwick this morning and would like to clarify the record.

THE COURT: All right.

MR. BELL: Maybe I could just clarify it directly, your Honor, this relates to the Special Masters' report which is D-60. I don't know whether your Honor has a copy of that.

[1663] THE COURT: I'm aware of the problem.

MR. BELL: There is a list on that on Page 26 which purports to be 25 most wanted prospects, and these are not customers, and they are described as—defendants have stated that none of these corporations is presently a customer, when asked about that yesterday, the witness had in mind another list which was 25 customers, in fact.

I have gone back to verify that, and the advice in

the Special Masters' report is, in fact, correct with, however, one exception, which I uncovered, and that has to do with the Town of North Haven, which is set forth as not presently a customer, that's an error. It is presently a customer. That's on Page 26 of that report.

Now, in fact, that was probably a minor error at the time of submission and it has grown within the time elapsing from submission to date to a significant error because there's been some very recent changes in the relations of that particular entity. In any event, it is an error and we would like to simply correct that for the record.

THE COURT: Was there any confusion about the list—customers that he actually lost, or felt [1664] that he did, because of pending power limits, somewhere along the line, and I haven't checked the transcript, but I will, I got a feeling that he referred to some list that—of customers that he lost because of lending limits?

MR. BELL: I think Mr. Reycraft started to ask him about precisely that point when the confusion on this list arose.

MR. REYCRAFT: Mr. Terzakis is going to cover that point in his testimony.

THE COURT: Where do you want me to make the change, Mr. Bell?

MR. BELL: Page 26 of the Masters' report, your Honor, and it simply indicates that—well, it describes 25 corporations. If we eliminate the Town of North Haven, that becomes 24, and the Town of North Haven represents an error, which is to say it is presently a customer. So the second one down on the right-hand column on Page 26, your Honor.

THE COURT: All right.

MR. BELL: To the extent the Master describes 25, there become 24, and he also refers on the next page in the fourth full paragraph of the 25 corporations listed above, 17 are customers of the Hartford area [1665] banks. The 17 calculation is likely to be thrown off by one in view of this change.

So with that correction, the list other than that does represent noncustomers.

THE COURT: All right.

MR. BELL: Thank you.

MR. REYCRAFT: One question on that, how about the balances, then, Town of North Haven, will that affect the balances that these Hartford banks have?

MR. BELL: No, because the balance figures could be—it could be that it could be a customer of both because the balance figures are reported by the Hartford banks, so those balance figures would remain the same and it may be that that was a customer of both.

MR. REYCRAFT: Mr. James Terzakis.

[1666] JAMES J. TERZAKIS, called as a witness, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Will you be seated, please.

What is your name, sir?

THE WITNESS: My name's James J. Terzakis, and I live at 570 Prospect Street in the City of New Haven.

THE CLERK: Would you spell your last name for us, please.

THE WITNESS: T-e-r-z-a-k-i-s.

DIRECT EXAMINATION

BY MR. REYCRAFT:

Q Mr. Terzakis, what is your present occupation?

A I'm a vice-president of the First New Haven National Bank.

Q What are your duties at the present time?

A My principal duties are—I would say I probably head the research function of the bank in terms of new branch locations, merger research and branch relocations.

Q How long have you held your present position?

A Approximately three years.

Q What did you do before that?

A I was research director.

[1667] Q Of the First New Haven National Bank?

A Yes, sir.

Q How long did you hold that position?

A Approximately two years.

Q Before that what did you do?

A Well, I was not an officer before that. When I became research director, that was first entry level as an officer. I was called a market research analyst.

Q How long have you been with the First New Haven National Bank altogether?

A It's eight years this month.

Q Prior to that were you in marketing?

A Yes, sir, I was associated with a marketing consulting firm in Salem, Massachusetts, as a research associate.

Q Have you worked on the merger application in this case and the preparation of exhibits in connection with this case?

A Yes, sir, I have.

Q Will you refer to D-5, Defendants' Exhibit 5.

Do you have a copy of that?

A No, sir, I don't.

Q (Handing document to the witness) Will you explain what D-5 is.

[1668] A This is First New Haven National Bank data on IPC demand deposits. It breaks it up by towns in New Haven County, and in one column it shows actual bankwide data—this is an actual census of our accounts—and on the other side it shows what the accounts would be if we gave effect to divestiture of three of them, of First New Haven's present offices. And on the second page it shows the town-by-town breakout for all of Fairfield County.

Q What does it indicate with respect to the origin of those accounts?

A Well, it shows where the statement address is for these accounts.

Q What percentage does it show come from New Haven County?

A In terms of dollars it shows 87.56 percent.

Q What percentage from Fairfield County?

A That's actual.

From Fairfield County it's 1.31 percent in terms of dollars.

Q Mr. Terzakis, are you familiar with D-6?

A Yes, sir.

Q Did you prepare that exhibit?

A Yes, sir.

Q Will you tell us what it shows.

[1669] A This is First New Haven Bank data on IPC demand deposits which are derived from Connecticut National Bank office towns—this is as of September 30, 1971—and those towns that are indicated in New Haven County as well as Fairfield County, and it shows the actual data, and it shows a pro forma statement giving effect of divestiture of three First New Haven National Bank offices that would be divested.

Q What are the totals before and after of the proposed divestiture?

A In terms of dollars there's some $17,673,000 actual. After divestiture it would represent $1,514,800.

In terms of percentages, the actual is 14.19 percent, and after divestiture it would be 1.26 percent.

Q Mr. Terzakis, did you have occasion to look into the number of applications for newly chartered state banks and newly chartered national banks?

A Yes, sir, I did.

Q Did you prepare an exhibit concerning those applications?

A Yes, sir, those are mine.

MR. REYCRAFT: Will you mark for identification as D-71 a document entitled applications for new state chartered banks and disposition, and as D-72 a document entitled applications for new national [1670] banks and disposition.

THE CLERK: Are these for identification?

MR. REYCRAFT: Yes, sir.

72.

THE CLERK: 72, national banks.

THE COURT: The divestitures you are talking about, Mr. Reycraft, pertain to those on the contract?

BY MR. REYCRAFT:

Q Your exhibits are for the three bank divestitures?

A Yes.
MR. REYCRAFT: For three banks.
THE COURT: Oh, the three banks.
MR. REYCRAFT: Under contract.
THE COURT: Under contract. All First New Haven?
MR. REYCRAFT: No, sir.
Q Mr. Terzakis—
A The only one I know that's under contract is our Derby office.
Q Of First New Haven?
A Of First New Haven, right.
THE COURT: So it is one First New Haven and two—
[1671] MR. REYCRAFT: CNB.
THE COURT: —CNB.
But your figures concerned the divestiture of those three; is that correct?
THE WITNESS: Yes, sir.
THE COURT: All right.

BY MR. REYCRAFT:

Q Just a minute, Mr. Terzakis. It seems that D-6 may have been prepared with respect to all six; is that right? Derby, Devon and Post Center, and CNB Orange and Milford—
A That's their branches.
Q You did this. Can you tell us what branches are involved? It it three or six?
A Well, this represents our accounts that we have in our branches, and the only ones that would be divested are our accounts, which would be Derby, Devon and Post Center.
Q But is the exhibit prepared on the assumption that three branches of both banks will be divested or that six branches in total will be divested?
A Well, the total. The total of—
Q Of six?
A The six branches would be divested.
Q So, then, on the assumption that the six branches [1672] are divested, the three under contract and three

others, the figures on D-6 show the pro forma effect of that divestiture on your business; is that right?

A Yes, sir.

Q Mr. Terzakis, what did your investigation show of the applications for new charters in the state banking system during—

THE COURT: Before we get off the divestiture, I think maybe before the trial is over I should get the figures separately with respect to the divestiture of the three that are under contract and the three that are not under contract. I think I ought to get those figures independenly, because, without prejudging the issue, there is a possibility that the evidence of three may be relevant and the evidence of the other three may not be, because they are not under contract.

So in that event I should have independent figures.

MR. REYCRAFT: We will supply them, your Honor.

BY MR. REYCRAFT:

Q Mr. Terzakis, let me show you D-71, which is the list of newly chartered state banks.

[1673] How many of them did you find had been newly chartered?

A Well, what I showed here was when they were filed, what action was taken, when a temporary certificate of authority was issued, the final certificate of authority, and if in fact it was established.

There were a total of 32 actual applications filed.

Q During what period of time?

A This began in 1962 inclusive through October 27th of this year, '72.

Q Does your exhibit show how many were approved and how many disapproved?

A Insofar as the information's available, yes, it does.

Q What does it show?

A Well, I did not tally the number listed.

It appears that ten of them were disapproved out of the 32.

Q Are there any for which no disposition is shown?

A No, sir. There are a few here that don't show

what the action was, but in fact they were established, so they must have been approved at some time.

Q I show you D-72.

Can you tell me what information you've got put [1674] together on D-72?

A This is a same type of listing but only pertains to new national banks that were filed for and what the subsequent disposition was where the information was available through published sources.

Q These are filings for new national bank charters in the State of Connecticut; is that right?

A That is correct.

Q Not branches, but new banks?

A New banks.

[1675] Q And how many such applications were made during the period of time in your study?

A These were 25 during this period of time. I might want to add here, Mr. Reycraft, that I, in fact, had gotten onto the mailing list of the Comptroller of the Currency in Washington, and he publishes a summary of actions on new national banks all over the country, and this is a monthly publication, and it is mailed to me automatically, and I have about the last five years all of those. Before 1967, they are irregularly available.

Q So that this may be less than all of the applications?

A That's right. It would tend to be understated.

Q So totaling all the state and national applications for newly chartered banks in the State of Connecticut, how many were there in the last ten years?

A 32 and 25, 57. Actually filed.

Q Mr. Terzakis, are you generally familiar with the branching system of the First New Haven National Bank?

A Yes, sir.

Q Are you familiar with the—

THE COURT: Excuse me. Did we get dispositions on the 25? Did you testify to that?

THE WITNESS: No, I don't think I did.

Q Will you do that, please?

[1676] A On the national banks? Your Honor, I count up ten here. Some of these do not show dispositions but I

do know, in fact, that they were never established. For example, the Branford National Bank and the National Bank of Branford and the First National Bank of Branford, there were three new bank applications filed for in Branford at the time that the First New Haven was considering a merger with the Branford Trust Company. They do not indicate here because it was not in the published sources, they do show from the Comptroller's summary of actions here that two Branford banks were disapproved, but, in fact, there were three such applications.

THE COURT: At least from the present record and from what your knowledge was, what is your best opinion as to the statistics on applications approved, disapproved or pending?

THE WITNESS: The only one—I do know that the Comptroller had a moratorium on new bank applications which goes back to about 1965, and the only national bank that has been chartered during that time, I believe, is the Liberty National Bank, which is indicated here, that was approved, and established September 12th of this year.

THE COURT: Now, obviously, the moratorium is not on filings, but approving, is that right?

[1677] THE WITNESS: Apparently so, yes, sir.

THE COURT: Because there are 25 that were filed?

THE WITNESS: Yes, sir. Yes, sir. The applications apparently were still coming in, but the Comptroller during this moratorium only made that one exception, apparently, the Liberty National Bank in Stamford.

THE COURT: To your knowledge, has that policy changed?

THE WITNESS: I think it is still under effect.

THE COURT: It is still in effect.

Are you going onto a new topic?

MR. REYCRAFT: Yes, sir.

THE COURT: Maybe it's a good time to adjourn, unless you have a few more questions.

MR. REYCRAFT: No, this is a convenient time, your Honor.

THE COURT: We'll recess until 11 o'clock Tuesday morning, gentlemen, not 10:30. 11 o'clock.

(Court adjourned at 3:50 p.m.)